No. 89-1817-CFX
Status: GRANTED

Title: County of Riverside and Cois Byrd, Sheriff of Riverside County, Petitioners
v.
Donald Lee McLaughlin, et al.

Docketed:
May 17, 1990

Court: United States Court of Appeals for the Ninth Circuit

Counsel for petitioner: Stein,Martin, Ferguson,Peter J., Bell,Michael A.

Counsel for respondent: Stormer,Dan, Herman,Richard P., Glick,James, Comiskey,Paul W.

Entry	Date	Note	Proceedings and Orders
1	May 17 1990	G	Petition for writ of certiorari filed.
3	Jun 18 1990	X	Brief of respondents McLaughlin, Donald L., et al. in opposition filed.
2	Jun 19 1990		DISTRIBUTED. September 24, 1990
4	Jun 27 1990	X	Reply brief of petitioners County of Riverside, et al. filed.
5	Oct 1 1990		Petition GRANTED. limited to Questions 1 and 3 presented by the petition.
			**********
6	Nov 8 1990		Brief amicus curiae of California filed.
7	Nov 9 1990		Brief amicus curiae of California District Attorneys Association filed.
10	Nov 14 1990		Brief amici curiae of County of Los Angeles, et al. filed.
8	Nov 15 1990		Joint appendix filed.
		*	Two Volumes
11	Nov 15 1990		Brief amicus curiae of District Attorney, County of Riverside, CA filed.
12	Nov 15 1990		Brief amici curiae of Hawaii, et al. filed.
13	Nov 15 1990		Brief of petitioners City of Riverside, et al. filed.
14	Nov 23 1990		SET FOR ARGUMENT MONDAY, JANUARY 7, 1991. (3RD CASE)
18	Nov 23 1990		Record filed.
		*	Certified copy of original record received. (Box).
15	Nov 27 1990		CIRCULATED.
16	Nov 29 1990		Record filed.
		*	Certified copy of C. A. Proceedings received.
17	Dec 3 1990	D	Motion of Grover C. Trask, II, District Attorney of Riverside County for leave to participate in oral argument as amicus curiae, for divided argument and for additional time filed.
19	Dec 18 1990	X	Brief amicus curiae of Youth Law Center filed.
20	Dec 19 1990	X	Brief amicus curiae of ACLU filed.
21	Dec 19 1990	X	Brief of respondents McLaughlin, et al. filed.
22	Dec 28 1990	X	Reply brief of petitioners Cty. of Riverside, et al. filed.
23	Jan 7 1991		Motion of Grover C. Trask, II, District Attorney of Riverside County for leave to participate in oral argument as amicus curiae, for divided argument and for additional time DENIED.
24	Jan 7 1991		ARGUED.

89-1817

No. _____

Supreme Court, U.S.
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MAY 17 1990
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1990

COUNTY OF RIVERSIDE and COIS BYRD, SHERIFF OF RIVERSIDE COUNTY,

Petitioners,

v.

DONALD LEE McLAUGHLIN, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Where a state, pursuant to this Court's invitation in *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 859 (1975) incorporates probable cause determinations for warrantless arrestees into existing pre-trial procedures such as arraignment that afford the arrestee additional constitutional protections, must the additional time necessary to provide these more extensive proceedings be factored into any determination as to whether the probable cause hearing is sufficiently "prompt" under *Gerstein*?

2. May a state, consistent with the requirements of the Fourth Amendment as interpreted by this Court in *Gerstein v. Pugh*, set a uniform outside period of two days, exclusive of Saturdays, Sundays and holidays, in which to provide warrantless arrestees with probable cause determinations, or must the constitutional "promptness" of probable cause hearings depend upon the circumstances of each case and preclude the setting of any uniform outside time period in which to provide such determinations?

3. Does a plaintiff arrested without a warrant and allegedly held without receiving a constitutionally prompt probable cause determination possess Article III standing for purposes of obtaining an injunction requiring a public entity to provide warrantless arrestees with constitutionally prompt probable cause hearings when (a) the time in which to provide plaintiff with a constitutionally prompt hearing has passed and (b) there is no allegation that the plaintiff will again be subjected to the allegedly unconstitutional practices of the public entity?

LIST OF PARTIES AND RULE 29.4(C) LIST

The parties to the proceeding below were the petitioners County of Riverside and Riverside County Sheriff Cois Byrd and respondents Donald Lee McLaughlin, John E. Jones, Diane Simon, Michael Scott Hyde, Brett Hale, David Keiser, Sharon Sweeney and Lavonne Hinds, on behalf of themselves and as representatives of a similarly situated class.

Because the constitutionality of two provisions of the California Penal Code has been drawn into question in the instant action, 28 U.S.C. section 2403(b) may be applicable in this case, and hence, petitioners have served the Attorney General for the State of California with this petition. Neither any of the parties, nor the lower federal courts in this case have certified to the Attorney General for the State of California the fact that the constitutionality of California statutes has been drawn into question by the instant litigation pursuant to 28 U.S.C. section 2403(b).

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No. _____

In The

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October Term, 1990

COUNTY OF RIVERSIDE and COIS BYRD,
SHERIFF OF RIVERSIDE COUNTY,

Petitioners,

v.

DONALD LEE McLAUGHLIN, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners County of Riverside and Cois Byrd, Sheriff of Riverside County, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit, entered in the above proceeding on November 8, 1989.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is reported at 888 F.2d 1276 and is reprinted in the Appendix hereto, pp. 1-10, *infra*.

The memorandum order of the United States District Court for the Central District of California granting a preliminary injunction in the case has not been reported. It is reprinted in the Appendix hereto, p. 11-13, *infra*.

JURISDICTION

Invoking federal jurisdiction under 42 U.S.C. section 1983, respondents brought suit against petitioners in the United States District Court for the Central District of California. On April 19, 1989, the district court granted the respondents' motion for preliminary injunction. See Appendix hereto, pp. 11-13, *infra*. Petitioners appealed the district court's order to the United States Court of Appeals for the Ninth Circuit, pursuant to 28 U.S.C. section 1292(a)(1).

Petitioners then sought a request for stay of the preliminary injunction in the district court pending resolution of the appeal. The district court declined to grant a stay and petitioners then filed a request for stay of the preliminary injunction pending disposition of the appeal in the Ninth Circuit. On June 20, 1989, the Ninth Circuit granted a stay pending resolution of the appeal and ordered the appeal expedited. See Appendix hereto, p. 14, *infra*.

On November 9, 1989, the Ninth Circuit issued its opinion and judgment affirming the district court's order granting respondents a preliminary injunction. Petitioners timely filed a petition for rehearing and suggestion for rehearing en banc in the Ninth Circuit. The

petition and suggestion for rehearing en banc were denied by the Ninth Circuit on April 10, 1990. See Appendix hereto, p. 15, *infra*. On April 18, 1990, petitioners filed an emergency motion for stay of mandate for 30 days to permit the filing of a petition for certiorari. On April 30, 1990, the Ninth Circuit issued its order granting the emergency motion for stay of mandate for 30 days pending the filing of a petition for writ of certiorari. See Appendix hereto, p. 16, *infra*.

The jurisdiction of this Court to review the judgment of the Ninth Circuit is invoked under 28 U.S.C. section 1254(1).

STATUTES INVOLVED

California Penal code sections 825 and 991

§ 825. Appearance before magistrate; unnecessary delay; maximum time; right of attorney to visit prisoner; officer refusing to permit visit, offense, forfeiture

The defendant must in all cases be taken before the magistrate without unnecessary delay, and, in any event, within two days after his arrest, excluding Sundays and holidays; provided, however, that when the two days prescribed herein expire at a time when the court in which the magistrate is sitting is not in session, such time shall be extended to include the duration of the next regular court session on the judicial day immediately following.

After such arrest, any attorney at law entitled to practice in the courts of record of California, may, at the request of the prisoner or any relative of such prisoner, visit the person so arrested. Any officer having charge of the prisoner so arrested who willfully refuses or neglects to allow such attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow any attorney to visit the prisoner when proper application is made therefor, shall forfeit and pay to the party aggrieved the sum of five hundred dollars ($500), to be recovered by action in any court of competent jurisdiction.

(Enacted 1872. Amended by Code Am.1880, c. 48, p. 30, § 1; Stats. 1907, c. 484, p. 888, § 1; Stats.1927, c. 616, p. 1044, § 1; Stats.1961, c. 2209, p. 4554, § 1.)

§ 991. Probable cause determination; misdemeanor to which defendant has pleaded not guilty; motion by defendant; setting for trial or dismissal and discharge; refiling complaint

(a) If the defendant is in custody at the time he appears before the magistrate for arraignment and, if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant, shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof.

(b) The determination of probable cause shall be made immediately unless the court grants a continuance for good cause not to exceed three court days.

(c) In determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference thereto, which, if based on information and belief, state the basis for such information, or any other documents of similar reliability.

(d) If, after examining these documents, the court determines that there exists probable cause to believe that the defendant has committed the offense charged in the complaint, it shall set the matter for trial. If the court determines that no such probable cause exists, it shall dismiss the complaint and discharge the defendant.

(e) Within 15 days of the dismissal of a complaint pursuant to this section the prosecution may refile the complaint.

A second dismissal pursuant to this section is a bar to any other prosecution for the same offense.

(Added by Stats.1980, c. 1379, p. 5003, § 1.)

Fourth Amendment to the United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

A. The Initial Proceedings

On August 24, 1987, plaintiff Donald Lee McLaughlin filed a Complaint for declaratory and injunctive relief on behalf of himself and "all others similarly situated" in the United States District Court for the Central District of California. Named as defendants were the County of Riverside and Cois Byrd, as Sheriff of the County of Riverside and individually. The Complaint purported to state a claim under 42 U.S.C. section 1983 for violation of civil rights, predicated upon the County of Riverside's alleged failure to provide "prompt probable cause" determinations for arrestees. The Complaint requested "an order and judgment requiring that the defendants and the County of Riverside provide in-custody arrestees, arrested without warrants, prompt probable cause, bail and arraignment hearings." The Complaint asserted that Mr. McLaughlin could properly represent the interest of the class members in that he was currently incarcerated in the Riverside County Jail and had not received a probable cause determination.

On October 13, 1987, plaintiffs moved to certify the class. On October 16, 1987, plaintiffs filed a First Amended Complaint. On November 20, 1987, the County of Riverside and Sheriff Byrd moved to dismiss the First Amended Complaint on the grounds that the named plaintiff lacked standing to prosecute the lawsuit in that there were no allegations that the named plaintiff would again be subject to the allegedly unconstitutional conduct, i.e., detention without a probable cause hearing, at any time in the future, citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660 (1983). In light of the pending

motion to dismiss, the district court continued the hearing on the motion to certify the class. On December 4, 1987, plaintiff filed his opposition to the motion to dismiss the First Amended Complaint. The motion to dismiss was taken under submission on December 21, 1987.

The district court did not rule on the motion to dismiss the First Amended Complaint. Rather, on July 25, 1988, pursuant to plaintiffs' request, the court accepted for filing a Second Amended Complaint. The Second Amended Complaint added as plaintiffs, Johnny E. Jones, Diana Rae Simon, and Michael Scott Hyde, asserting that they had been arrested without warrants, taken to Riverside County Jail, and "did not receive and have not received prompt probable cause and bail hearings and are still in custody." The Second Amended Complaint also added as plaintiffs Brett Hale, David Keiser, who were "pre-trial detainees in Riverside County Jail," and Sharon Sweeney and Lavonne Hinds, who were alleged to be "pregnant women prisoners of the Riverside County Jail," in an attempt to assert new causes of action under the Civil Rights Act predicated upon alleged poor conditions for such prisoners in the Riverside County Jail. In light of the filing of the Second Amended Complaint, the motion to dismiss the First Amended Complaint was taken off calendar. On August 23, 1988, defendants filed an answer to the Second Amended Complaint.

On November 14, 1988, the court granted plaintiffs' motion to certify the class.[1]

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[1] The class was certified only with respect to those prisoners purportedly held without receiving a prompt probable

(Continued on following page)

B. The Motion For Preliminary Injunction.

On March 3, 1989, plaintiffs filed a motion for preliminary injunction. Based upon data collected almost a year and one-half earlier, in 1987, plaintiffs asserted that persons arrested without warrants in the Central Riverside County Jail were not receiving a prompt probable cause determination upon completion of the administrative steps necessary to complete an arrest as required by *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 859 (1975). Plaintiffs requested the court to issue a preliminary injunction requiring inmates in the Central Riverside County Jail to receive a probable cause determination within 36 hours of arrest, to be conducted by an appropriate judicial officer.

On April 7, 1989, defendants filed their opposition to the motion for preliminary injunction. Defendants noted that plaintiffs lacked standing in the lawsuit because there was no evidence that any of the named class members would again be subject to the allegedly unconstitutional policy and practice of the County of Riverside which formed the basis of their complaint. Specifically, there was no evidence to indicate that these individuals would again be arrested and subjected to detention without a prompt probable cause hearing. Defendants further argued that, based upon data collected in March 1989, prisoners detained in the Central Riverside County Jail were receiving a prompt probable cause determination

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(Continued from previous page)

cause determination. The court did not certify the action for purposes of pursuing either the jail overcrowding or treatment of pregnant prisoner issues.

consistent with *Gerstein v. Pugh*. Pursuant to the California Supreme Court's interpretation of *Gerstein*, as well as consistent with California Penal Code sections 825 and 991, inmates were receiving at the time of arraignment within two days of arrest, the option of having a probable cause determination made by a judicial officer. In support of the contention, defendants offered documentary evidence demonstrating that the majority of arrestees were released within 24 hours of arrest and that individuals held beyond the maximum two-day statutory period were the exception and not the rule.

On April 13, 1989, plaintiffs filed their reply to the opposition to the motion for preliminary injunction.

On April 17, 1989, the motion for preliminary injunction came on for hearing before the Honorable Richard Gadbois. The motion was taken under submission. *Id.* On April 19, 1989, the court issued a preliminary injunction directing inmates at the Central Riverside County Jail to be taken before a "Judge, Magistrate, Court Commissioner, or other authorized judicial officer" for a probable cause determination within 36 hours of arrest. Defendants were given 60 days in which to comply with the order. The order further stated that the court would retain jurisdiction to review procedures adopted by the County pursuant to the order, and to monitor implementation of the procedures in the Riverside County branch jails "as soon as practicable."

C. The Appeal.

On May 11, 1989, defendants filed a notice of appeal from the district court's order granting the preliminary

injunction. Defendants then moved for a stay pending appeal in the district court, which was denied. Defendants then requested the Ninth Circuit to grant a stay pending appeal, and on June 20, 1989, the Ninth Circuit granted the request for stay and expedited the appeal. *Infra*, App., p. 14.

On appeal, the parties largely reiterated their position from the district court. Petitioners contended that the policy of the County of Riverside whereby warrantless arrestees were provided with the opportunity for probable cause determinations within two days of arrest as required by California Penal Code sections 825 and 991 complied with this Court's decision in *Gerstein*. Petitioners also noted that the 36 hour time period imposed by the district court was not derived from data concerning the actual time consumed by completing the paperwork attending a warrantless arrest, or by arranging for arraignment of a prisoner. Rather, the 36 hour time period was taken part and parcel from a stipulated order and judgment in another case that was before the district court involving Orange County pretrial proceedings, *Scott v. Gates*, CV 84-8647-RG (C.D. Cal. Oct. 3, 1988). Petitioners additionally asserted that the named class representatives lacked standing to prosecute the instant action under this Court's decision in *Lyons v. City of Los Angeles*.

The Ninth Circuit consolidated the instant case with a similar action, *McGregor, et al. v. County of San Bernardino*, Ninth Circuit Case No. 89-55542, arising from a district court's order granting a preliminary injunction requiring the County of San Bernardino to provide warrantless arrestees with probable cause determinations within 36 consecutive hours of arrest. In the latter action,

the defendant, County of San Bernardino, did not challenge the 36-hour time requirement but, rather, simply challenged the need for the arrestees to personally appear before a magistrate in order to receive a probable cause determination.

On November 8, 1989, the Ninth Circuit issued its opinion affirming the district court's order granting a preliminary injunction with respect to the County of Riverside in the case. The Court found that the named class representatives had standing under *Lyons* and further found that providing probable cause determinations within the arraignment timeframe of 48 hours under California Penal Code sections 825 and 991 were not in accord with *Gerstein*'s requirement that a determination of probable cause must be made promptly after arrest. See App., pp. 5-7, *infra*.

Petitioners then timely filed a petition for rehearing and suggestion for rehearing en banc, which was denied by the Ninth Circuit on April 10, 1990. *Infra*, App., p. 15. In order to preserve the stay pending the filing of a petition for writ of certiorari, petitioners then filed an emergency motion in the Ninth Circuit to stay issuance of mandate for 30 days in order to permit the filing of a petition for a writ of certiorari. On April 30, 1990, the Ninth Circuit granted the emergency motion and ordered the issuance of mandate stayed for 30 days to permit the filing of a petition for a writ of certiorari. See p. 16, *infra*.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I.

REVIEW IS WARRANTED BECAUSE THE NINTH CIRCUIT'S NOVEMBER 8, 1989, OPINION IS IN CONFLICT WITH OPINIONS OF THIS COURT, THE SECOND CIRCUIT, AND CALIFORNIA SUPREME COURT, CONCERNING INCORPORATION OF THE PROBABLE CAUSE HEARINGS REQUIRED BY GERSTEIN V. PUGH INTO EXISTING PRE-TRIAL PROCEEDINGS.

In its November 8, 1989, opinion, the Ninth Circuit expressly held that providing probable cause determinations at arraignment within the time frames provided by California Penal Code sections 825 and 991 "is not in accord with *Gerstein*'s requirement of a determination 'promptly after arrest.' " App., p. 7. In so holding, the Court stated that *Gerstein* required a probable cause determination to be made "as soon as the administrative steps incident to arrest were completed, and that such steps should require only a 'brief period' " – in this case, 36 consecutive hours after arrest. *Id.* In determining the constitutional "promptness" of the probable cause determination, the Ninth Circuit looked *solely* to completion of arrest reports and the like, and ignored the time necessary to provide the warrantless arrestee with a full-blown adversarial hearing at arraignment in compliance with California state law. As we discuss, the Ninth Circuit's conclusion in this regard is directly contrary to the decisions of this Court, as well as the Second Circuit and California Supreme Court.

Gerstein involved a constitutional challenge to Florida procedures under which criminal defendants charged

by a prosecutor's information could be detained for extended periods. This Court held that "the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest." 420 U.S. at 114. However, the Court did not attempt to "mandate a specific timetable" for probable cause determinations. *Schall v. Martin*, 467 U.S. 253, 275, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984). Rather, the Court emphasized that states were to be provided flexibility in incorporating the probable cause determination into their own existing pretrial procedures:

> "There is no single preferred pretrial procedure, and the nature of the probable cause determination usually *will be shaped to accord with a State's pretrial procedure viewed as a whole.* While we limit our holding to the precise requirement of the Fourth Amendment, we recognize the desirability of flexibility and experimentation by the states. *It may be found desirable for example to make the probable cause determination ot the suspect's first appearance before a judicial officer* [citation], or the determination may be incorporated into the procedure for setting bail or fixing other conditions of pretrial release. . . ." *Gerstein v. Pugh*, 420 U.S. at 123-125; emphasis added.

In *Schall v. Martin*, 467 U.S. 253, this Court applied *Gerstein* in rejecting a due process attack on a state statute which allowed juveniles to be detained for a delinquency determination for three, and sometimes as much as six days prior to receiving a probable cause determination. The Court noted that in light of *Gerstein* this delay was permissible, emphasizing that in *Gerstein* "we did not mandate a specific time table" and recognized " 'the desirability of flexibility and experimentation by the

states.' " 467 U.S. at 275. Thus, in *Schall*, the Court found that since the state statute in question required probable cause determinations to be made at hearings which offered procedural protections far greater than those required by *Gerstein*, i.e., an adversarial proceeding with the presence of counsel, that the provision amply met the requirements of the Constitution. Indeed, in *Schall*, the Court observed that "*Gerstein* indicated approval of pretrial detention procedures that supplied a probable cause hearing within five days of the initial detention." 467 U.S. at 277, n. 28.

This Court's invitation to the states in *Gerstein* to incorporate probable cause determinations into existing pre-trial proceedings did not go unheeded by the states. In *In re Walters*, 15 Cal.3d 738, 126 Cal.Rptr. 239, 543 P.2d 607 (1975), the California Supreme Court held that the constitutional requirements articulated in *Gerstein* would be met if persons arrested for a misdemeanor without a warrant received a probable cause determination at the time of arraignment, i.e., within two days after a suspect's arrest. *Id.* at 15 Cal.3d 750 ["(W)e consider *arraignment to be the most appropriate stage of the proceedings at which to make a judicial determination of probable cause . . .*"; emphasis added]. At the arraignment, the defendant was entitled to ask a judicial officer to review any documents pertinent to the arrest, including a sworn complaint, or the police or other report which forms the basis of the complaint and arrest and was entitled to be represented by counsel and to present his own evidence to the judicial officer. 15 Cal.3d at 750.

Consistent with the California Supreme Court's determination in *In re Walters* that *Gerstein* required a probable cause determination at the time of arraignment, the California Legislature enacted Penal Code section 991 requiring such determinations to be made at arraignment. See *People v. Ward*, 188 Cal.App.3d 459, 233 Cal.Rptr. 477 (1986). Under Penal Code section 825, a detainee is required to be taken before a magistrate for arraignment within "two days" of arrest, excluding Saturdays, Sundays and holidays.[2] Thus, the California Legislature, under the guidance of the California Supreme Court, has accepted this Court's invitation in *Gerstein* to incorporate probable cause determinations into existing pretrial proceedings.

In *Williams v. Ward*, 845 F.2d 374 (2d Cir. 1988), the Second Circuit upheld a similar state procedure for providing a probable cause determination at arraignment within 72 hours of arrest as constitutionally permissible under *Gerstein*. The Court rejected the argument that

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[2] There is currently a conflict among the California Courts of Appeal as to whether the term "two days" as used in section 825 means 48 hours from the time of arrest, excluding Sundays and holidays (*People v. Chambers*, 276 Cal.App.2d 89, 80 Cal.Rptr. 672 (1969); *People v. Lee*, 3 Cal.App.3d 514, 521, 83 Cal.Rptr. 715 (1970), cert. denied, 402 U.S. 999, 91 S.Ct. 2175 (1971); *People v. Ross*, 236 Cal.App.2d 364, 368, 46 Cal.Rptr. 41 (1963); *Youngblood v. Gates*, 200 Cal.App.3d 1302, 1335-1337, 246 Cal.Rptr. 775 (1988) [George, J. dissenting]) or two "calendar" days from the time of arrest (*Youngblood v. Gates*, 200 Cal.App.3d 1302, 246 Cal.Rptr. 775). This conflict is irrelevant in the instant case as the 36 hour outside period set by the Ninth Circuit would be violated by the County's compliance with either interpretation of section 825.

"promptness" of a probable cause hearing was determined solely by the time needed to complete booking and processing of prisoners:

> "The case law simply does not support this rule. *Gerstein* itself stressed the need for flexibility and expressly stated that a probable-cause determination might be made at the first appearance before a judicial officer *or* incorporated into procedures for pretrial release. [Citations.] That alone is a dispositive statement that completion of the 'administrative steps incident to arrest' does not trigger a right to an immediate probable-cause hearing in light of the fact that *numerous other steps are necessary to complete the pretrial release procedures into which the probable-cause determination may be merged.*" *Id.* at 386; emphasis added.

The Court continued (also at 386):

> "The Court . . . recognized that states might employ procedures that are more complex than the minimum ex parte hearing described in *Gerstein*, and that states may wish to combine probable-cause hearings with procedures for fixing the terms of pretrial release [citation]. In addition, by endorsing the procedures of the ALI Model Code, the court recognized that states could constitutionally choose to employ adversarial procedures albeit two 'court days' after arrest, to determine probable cause. [Citation.] Similarly, in *Schall*, the Supreme Court expressly upheld procedures that entitled an accused juvenile 'to a formal adversarial probable cause hearing within 3 days of his initial appearance.' [Para.] The Supreme Court's endorsement of such a vast array of procedures, along with its recognition that *additional procedures require additional time, indicate that the constitutional 'promptness' of a probable cause hearing must be determined in light of the totality of the processes afforded the defendant.*" Emphasis added.

In *Williams*, the Second Circuit correctly determined that *Gerstein* and *Schall* require a court to take into account the *totality* of the processes afforded to an arrestee by the particular criminal justice system in determining the permissible amount of delay between the time of arrest and providing a probable cause determination in the context of such procedures. This aspect of *Gerstein* is not addressed in the Ninth Circuit's decision, nor is there any discussion of *Schall* or of *Williams* notwithstanding an extended discussion of these cases in the briefs filed by the parties. Rather, the Ninth Circuit looked solely at the mechanics of processing prisoners after arrest, i.e., booking and the like, in determining the promptness of any probable cause determination, without regard for delays necessitated by providing prisoners with greater constitutional protections at arraignment. This was consistent with the Ninth Circuit's established policy of reviewing such time periods on a case-by-case basis, without regard to uniform procedures. *Bernard v. City of Palo Alto*, 699 F.2d 1023 (9th Cir. 1983); *Kanekoa v. City and County of Honolulu*, 879 F.2d 607, 610 (9th Cir. 1989). In failing to take into account the totality of protections accorded warrantless arrestees under the County of Riverside's compliance with California Penal Code sections 825 and 991 in determining the constitutional promptness of probable cause determinations, the Ninth Circuit has misapprehended the law as stated by this Court and, at minimum, created a conflict between the Ninth Circuit and the Second Circuit, as well as between the Ninth Circuit and the California Supreme Court.

The Ninth Circuit's decision in this case has a profound impact on virtually every state criminal justice system within its jurisdiction, as well as throughout the country. By interpreting the term "administrative steps incident to arrest" narrowly to include only that paperwork and processing attending the actual arrest and booking procedures without regard to delays attributable to providing the warrantless arrestee with greater constitutional protections at a more extensive proceeding, such as arraignment, the Ninth Circuit has effectively precluded states from accepting this Court's invitation in *Gerstein* to incorporate probable cause hearings into existing pre-trial proceedings. Since, under the Ninth Circuit's decision in this case, delays related to providing a prisoner with a more extensive hearing do not provide an adequate basis to delay a probable cause hearing, states are virtually required to create a new tier of proceedings in which probable cause determinations are made.

Moreover, the Ninth Circuit's decision in this case virtually eliminates the ability of a state to set any uniform outside time period for providing warrantless arrestees with probable cause determinations. By reaffirming its previous holding that "the time period required by the Fourth Amendment depends on the circumstances of each case," (*Kanekoa v. City and County of Honolulu*, 829 F.2d 610) the Ninth Circuit has virtually guaranteed that separate suits will be brought within each jurisdiction in order to determine whether the probable cause period used in that jurisdiction meets the requirements of the Fourth Amendment as set forth in *Gerstein*. As the California District Attorney's Association noted in an amicus brief filed in the Ninth Circuit in this

action, the elimination of the uniform 48-hour outside time period of California Penal Code sections 825 and 991 will likely result in different time periods being applied in each of the 58 counties of the State of California – time periods set only after extensive litigation in federal and state trial courts within each county.

Indeed, this sort of piecemeal creation of standards has already commenced in California, as evidenced by the instant lawsuit involving the Counties of San Bernardino and Riverside, the Orange County litigation from which the 36-hour time period imposed by the district court in this case was drawn, as well as the Ninth Circuit's recent decisions in *Bernard v. City of Palo Alto*, 699 F.2d 1023 [probable cause determination must be made less than 24 hours after arrest] and *Kanekoa v. City and County of Honolulu*, 879 F.2d 607 [rejecting fixed 24-hour time period as constitutionally required]. Nor is the problem limited to the State of California. As even a cursory review of the law in the area reveals, federal courts at all levels are resolving these matters on an ad hoc basis. See *Lively v. Cullinane*, 451 U.S. F.Supp. 1000, 1003 (D.D.C. 1978) [delay of more than one and one-half hours in providing probable cause determination requires some reasonable explanation for delay]; *Gramenos v. Jewel Companies, Inc.*, 797 F.2d 432, 437 (7th Cir. 1986), cert. denied, 481 U.S. 1028, 107 S.Ct. 1952, 95 L.Ed.2d 525 (1987) [four-hour delay prior to probable cause determination requires explanation]; *Doulin v. City of Chicago*, 662 F.Sup. 318, 332 (N.D.Ill. 1986) [same]; *Sanders v. City of Houston*, 543 F.Supp. 694, 702 (S.D.Tex. 1982), aff'd. 741 F.2d 1379 (5th Cir. 1984) [24-hour outside time period for providing warrantless arrestees with probable cause determination];

Williams v. Ward, 845 F.2d 374, 388-389 [72-hour delay in providing probable cause determination permissible].

Quite simply, it is a matter of great significance whether a) states may set a uniform outside time period for providing warrantless arrestees with probable cause determinations as suggested by *Gerstein* and reaffirmed in *Schall* and b) whether delays occasioned by providing arrestees with additional constitutional protections at more extensive proceedings, such as arraignment, will be factored in for purposes of determining whether the probable cause determination is "constitutionally prompt" under *Gerstein*. As it now stands, the Ninth Circuit has declared unconstitutional two critical portions of the California Penal Code and essentially mandated an entirely new tier of criminal proceedings be created in the State of California. In light of the plain conflict between the decision of the Ninth Circuit in this case and the decisions of this Court, the Second Circuit and the California Supreme Court with respect to virtually identical issues, review is amply warranted. Thus, petitioner respectfully submits that the petition for writ of certiorari should be granted.

II.

REVIEW IS WARRANTED BECAUSE THE NINTH CIRCUIT'S OPINION CONFLICTS WITH THE DECISIONS OF THIS COURT AND SEVENTH CIRCUIT COURT OF APPEALS REGARDING THE STANDING OF INDIVIDUALS WHO HAVE ALLEGEDLY SUFFERED INJURY AS A RESULT OF MISCONDUCT BY LAW ENFORCEMENT PERSONNEL TO OBTAIN INJUNCTIVE RELIEF IN THE ABSENCE OF ALLEGATIONS THAT THEY WILL AGAIN BE SUBJECT TO THE MISCONDUCT IN THE FUTURE.

The Second Amended Complaint in this action alleges that the named plaintiffs were "arrested without

warrants, were taken to Riverside Jail, did not receive and have not received prompt probable cause and bail hearings and are still in custody." The prayer of the Second Amended Complaint then requests an "order and judgment requiring that the defendant's and the County of Riverside provide in-custody arrestees, arrested without warrants, prompt probable cause bail and arraignment hearings. . . ." In short, the Second Amended Complaint alleges that the named plaintiffs *did not* receive prompt probable cause determinations and asks the court to issue an order requiring the County of Riverside to provide prompt probable cause hearings. The problem with plaintiffs' position is, however, that once they did not receive a *prompt* probable cause hearing, their rights had already been violated, i.e., no prompt determination had allegedly taken place. Because plaintiffs had already allegedly been held without a prompt probable cause determination, the equitable relief sought would in no way be able to redress *their* injuries – the alleged transgression had already taken place.

The named plaintiffs had no "personal stake" in the action for purposes of the equitable relief sought. Once they had been denied a "prompt" probable cause hearing, their rights had already been violated and to the extent they sought injunctive relief to prevent *future* violations, they would have to allege that they would again be subject to warrantless arrest without receiving a prompt probable cause determination. In its opinion, however, the Ninth Circuit determined that it was simply enough that the named plaintiffs were all suffering an injury at the time the complaint was filed even if injunctive relief could not cure that injury. Yet, in *City of Los Angeles v.*

Lyons, this Court rejected precisely that theory for purposes of asserting a claim of standing to assert entitlement to equitable relief:

> "The Court of Appeal . . . asserted that Lyons had a 'live and active claim' against the City 'if only for a period of a few seconds' while the stranglehold was being applied to him and that for two reasons the claim had not become moot so as to disentitle Lyons to injunctive relief. . . . We agree that Lyons *had* a live controversy with the City. Indeed, he still has a claim for damages against the City that appears to meet all Art. III requirements. Nevertheless, the issue here is not whether that claim has become moot but whether Lyons meets the preconditions for asserting an injunctive claim in a federal forum. The equitable doctrine that cessation of the challenged conduct does not bar any injunction is of little help in this respect, for *Lyons' lack of standing does not rest on the termination of the police practice but on the speculative nature of his claim that he will again experience injury as the result of that practice even if continued." City of Los Angeles v. Lyons*, 461 U.S. at 109, 103 S.Ct. at 1669; emphasis added.

Here, as in *Lyons*, the constitutional violation asserted as the basis for the plaintiffs' equitable complaint was, as to the named plaintiffs, concluded at the time the complaint was filed and any relief sought was solely *prospective* in nature. If the named plaintiffs had not yet received a prompt probable cause determination, the County of Riverside could not give them one because, under plaintiffs' theory of the case, the time in which to do so had *already* expired. Even if the plaintiffs were still in custody, the mere fact that the injury continues does not provide a basis for injunctive relief if the relief sought does not cure the injury. If that were so, then the plaintiff

in *Lyons* would have had standing to assert a claim for equitable relief simply by alleging that he suffered personal injuries by reason of application of the chokehold.

Here, as in *Lyons*, the individual plaintiffs might have a proper basis for asserting a *damage* claim against the County of Riverside based upon their allegedly not receiving prompt probable cause determinations. See *Robinson v. City of Chicago*, 868 F.2d 959, 968 (7th Cir. 1989). However, under *Lyons*, they cannot bring a claim for injunctive relief in the absence of allegations suggesting that they again would be subject to any unconstitutional conduct that could be redressed by issuance of the injunction. Significantly, this is precisely the conclusion rendered by the Seventh Circuit under virtually identical facts in *Robinson v. City of Chicago*, 868 F.2d 959. In *Robinson*, the Court of Appeals reversed an order granting injunctive and declaratory relief in a class action suit seeking to prevent the Chicago City Police Department from holding warrantless arrestees in excess of 72 hours without a probable cause determination. The named plaintiffs in the class action asserted that the police department's policy of holding arrestees without a probable cause determination beyond 72 hours violated this Court's decision in *Gerstein*. None of the named plaintiffs, however, had or could establish that he would in the future again be arrested and hence suffer the purported constitutional violation so as to provide standing under *Lyons* to assert a claim for injunctive relief. Thus, the Court held:

> "[A]s with the *Lyons* plaintiff, neither Richardson nor the Doulin plaintiffs can allege that

it is reasonable likely that they will again encounter the police. [Citation.] Because the various plaintiffs' future conduct presumably will give the police no probable cause to arrest them, they cannot expect that they will encounter the police or, if they did, that the police would again detain them pending investigation or fingerprint clearance. Thus, even if the police were to continue to detain others for investigation . . . the possibility that Richardson would suffer any injury as a result of that practice is too speculative. Richardson has not alleged and has not shown that he is in immediate danger of being directly injured by the same official conduct challenged as unconstitutional – post-arrest detention for investigation prior to a probable cause hearing." 868 F.2d at 966.

Critically, the *Robinson* Court observed that by its very nature governmental conduct with respect to pretrial detention is necessarily "limited temporally" and thus provides "no significant possibility that a putative plaintiff would have enough time while detained to file suit" in order to obtain standing for purposes of seeking injunctive relief. 868 F.2d at 968. In short, where, as here, the plaintiffs are alleging that they have not received a prompt probable cause determination, once the time for providing them with such a determination has passed, they necessarily lack a direct personal interest in any claim for injunctive relief attempting to obtain a "prompt" probable cause determination.

The Ninth Circuit's decision in this case is clearly inconsistent with this Court's decision in *Lyons*, and, at minimum, directly conflicts with the Seventh Circuit's opinion in *Robinson v. City of Chicago*. It throws open the courthouse doors to an entire class of lawsuits that this

Court found to be foreclosed by the plain terms of Article III in *Lyons*. Thus, in order to prevent an unconstitutional expansion of the jurisdiction of the federal courts, the petition for writ of certiorari should be granted.

CONCLUSION

For the foregoing reasons, petitioners respectfully submit that the petition for writ of certiorari should be granted.

Dated: May 17, 1990.

Respectfully submitted,

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FIDLER & BELL
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Attorneys for Petitioners County of Riverside and Cois Byrd, Sheriff of Riverside County

SPECIAL EARTHQUAKE NOTICE

This opinion is being filed while the Clerk's office in San Francisco is closed due to sever earthquake damage. Once the Clerk's office is operational, notices will be placed in legal newspapers throughout the Circuit. At that time parties may seek additional time to file a petition for rehearing if they desire to file one.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DONALD LEE MCLAUGHLIN, and all others similarly situated, *Plaintiffs-Appellees,* v. COUNTY OF RIVERSIDE and COIS BYRD as Sheriff and individually, *Defendants-Appellants.*	No. 89-55534 D.C. No. CV-87-5597-RG
IAN MCGREGOR, MARGINE BONNER, and all other similarly situated, *Plaintiffs-Appellees,* v. THE COUNTY OF SAN BERNARDINO and FLOYD TIDWELL as Sheriff and individually, *Defendants-Appellants*	No. 89-55542 D.C. No. CV-87-5596-RG OPINION

Appeal from the United States District Court
for the Central District of California
Richard A. Gadbois, Jr., District Judge, Presiding

Argued and Submitted
September 11, 1989 – Pasadena, California

Filed November 8, 1989

Before: Mary M. Schroeder and Robert R. Beezer, Circuit Judges, and Samuel P. King,* District Judge.

Opinion by Judge Schroeder

SUMMARY

Criminal Procedure/Constitutional Law

Affirming in part and reversing in part the district court's entry of preliminary injunctions, the court held that the requirement of providing warrantless arrestees in urban jail facilities with a probable cause determination within thirty-six hours is reasonable.

Two California counties, Riverside and San Bernardino, appealed identical district court preliminary injunctions entered in two class actions. Both injunctions require the counties to institute certain policies directed at prompt conduct of probable cause determinations for persons arrested without a warrant. The injunctions apply only to those detained in the counties' urban jail

* Honorable Samuel P. King, Senior U.S. District Judge for the District of Hawaii, sitting by designation.

facilities. San Bernardino challenges the requirement that a probable cause determination for warrantless arrestees be made within thirty-six hours of arrest. San Bernardino challenges the requirement that the detainees be present for such determinations unless the detainees choose not to attend. In addition, San Bernardino challenges the standing of the plaintiffs. [1] The named plaintiffs in this suit against Riverside County were jail inmates arrested without warrants who had not yet received probable cause determinations and were still in custody at the time they filed the complaint, actually suffering the harm for which they sought relief. They have standing.

[2] Riverside argued that the thirty-six hour requirement exceeds that of *Gerstein v. Pugh*, 420 U.S. 103, 95 S. Ct. 854, 43 L.Ed.2d 54 (1975), in which the Supreme Court held that the fourth amendment requires the state to provide a fair and reliable determination of probable cause promptly after arrest. [3] Riverside contended that its compliance with California Penal Code §§ 825 and 991, permitting a probable cause determination at arraignment, fulfills its *Gerstein* obligations. [4] Providing probable cause determinations within such an arraignment time permits as much as forty-eight hours plus a Sunday or holiday to elapse before the determination is made. This is not in accord with *Gerstein's* requirement of a determination promptly after arrest. [5] The judge, in issuing the injunction, concluded that thirty-six hours provided the County with ample time to complete its administrative procedures, and Riverside has not presented any facts to the contrary.

[6] The Supreme Court in *Gerstein* did not hold that the fourth amendment affords arrestees the right to attend a probable cause determination. Those arrested with a warrant have not attended the probable cause determination made before issuance of the warrant, and there is no basis for holding that the fourth amendment grants warrantless arrestees such a right.

COUNSEL

Timothy T. Coates, Beverly Hills, California, and Susan A. Hopkins, San Bernardino, California, for the defendants-appellants.

Dan Stormer, Los Angeles, California, and Richard P. Herman, Balboa Island, California, for the plaintiffs-appellees.

OPINION

SCHROEDER, Circuit Judge:

These appeals are consolidated for the purpose of this disposition.

Two California counties, Riverside and San Bernardino, appeal identical district court preliminary injunctions entered in two class actions. Both injunctions require the counties to institute certain policies directed at prompt conduct of probable cause determinations for persons arrested without a warrant. The injunctions apply only to those detained in the counties' urban jail facilities.

The two key requirements of the injunctions are, first, that such probable cause determinations be made by a judge (or a magistrate or other judicial officer) within thirty-six hours of arrest and, second, that the detainees be present for such determinations unless the detainees choose not to attend or circumstances such as hospitalization, make attendance impracticable. The County of Riverside challenges the first requirement, namely that the probable cause determination be made within thirty-six hours of arrest. The County of San Bernardino challenges the second requirement, that of physical presence. In addition, the County of Riverside challenges the standing of the plaintiffs named as class representatives in its case.

We deal first with the standing issue. In order to invoke the jurisdiction of the federal courts, plaintiffs must allege an actual case or controversy by demonstrating a "personal stake in the outcome." *Baker v. Carr*, 369 U.S. 186, 204, 82 S. Ct. 691, 7 L.Ed.2d 663 (1962). "The plaintiff must show that he 'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged official conduct and the injury or threat of injury must be both 'real and immediate.' " *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-102, 103 S. Ct. 1660, 75 L.Ed.2d 675 (1983).

At the time they filed their complaint, the named plaintiffs in the Riverside action were jail inmates arrested without warrants who did not receive within thirty-six hours, and had not yet received, probable cause determinations. They alleged that they, and those similarly situated, were entitled as matter of due process to a hearing within thirty-six hours of the time of their arrest.

[1] In challenging their standing, Riverside County relies upon *City of Los Angeles v. Lyons*, 461 U.S. 95. In *Lyons*, the Supreme Court held that a plaintiff who had been the victim of a police chokehold lacked standing to obtain an injunction barring the City of Los Angeles Police Force's future use of chokeholds because the plaintiff could not establish a real threat that an officer would choke him again. In *Lyons*, the constitutionally objectionable practice, namely the choking of the plaintiff by the policeman, had ceased by the time the plaintiff sought an injunction. In contrast, named plaintiffs in this suit against Riverside County were jail inmates arrested without warrants who had not yet received prompt probable cause determinations, and were still in custody at the time they filed their complaint. Rather than complaining of a past constitutional violation, plaintiffs in *McLaughlin* were actually suffering the harm for which they sought injunctive relief. They have standing.

[2] We therefore turn to Riverside County's contention on the merits. The County argues that the injunction's requirement of providing warrantless arrestees with a probable cause determination within thirty-six hours of arrest exceeds the requirements of the leading Supreme Court decision in this area, *Gerstein v. Pugh*, 420 U.S. 103, 95 S. Ct. 854, 43 L.Ed.2d 54 (1975). *Gerstein* held that the fourth amendment requires the state to provide "a fair and reliable determination of probable cause as a condition for any significant restraint of liberty." *Id.* at 125. It further held that "this determination must be made by a judicial officer either *before or promptly after arrest.*" *Id.* (Emphasis added). This court followed *Gerstein* in *Bernard v. City of Palo Alto*, 699 F.2d 1023, 1025 (9th Cir.

1983). We there held that *Gerstein* required a probable cause determination to be made as soon as the administrative steps incident to arrest were completed, and that such steps should require only a "brief period." *See Kanekoa v. City and County of Honolulu*, 879 F.2d 607 (9th Cir. 1989).

[3] Riverside County contends that its compliance with California Penal Code §§ 825 and 991, permitting a probable cause determination at arraignment, fulfills its *Gerstein* obligations. Section 825 states: "The defendant must in all cases be taken before the magistrate (for arraignment) without unnecessary delay, and, in any event within two days after his arrest excluding Sundays and holidays. . . ." Section 991 provides in relevant part that if a "defendant is in custody at the time he appears before the magistrate for arraignment . . . the magistrate . . . shall determine whether there is probable cause to believe that a public offense has been committed. . . ."

[4] Providing probable cause determinations within such an arraignment time frame permits as much as forty-eight hours plus an intervening Sunday or holiday to elapse before the determination is made. This is not in accord with *Gerstein's* requirement of a determination "promptly after arrest." Indeed, in *Bernard*, 699 F.2d at 1025, we upheld an injunction requiring a probable cause determination within 24 hours after arrest, emphasizing that under the circumstances of that case, more time was not required to complete the administrative procedures incident to the arrest. Other circuits are in accord. *See, e.g., Llaguno v. Mingey*, 763 F.2d 1560, 1567-1568 (7th Cir. 1985) (en banc) (detention for 42 hours without probable cause determination violated warrantless detainees' due

process rights where officers did not require 42 hours to complete the administrative steps incident to arrest such as booking and completing paperwork), *United States v. Garza*, 754 F.2d 1202, 1211 (5th Cir. 1985); *Fisher v. Washington Metro. Area Transit Authority*, 690 F.2d 1133, 1139-1141 (4th Cir. 1982) (probable cause determination must be held as soon as police complete the administrative steps incident to arrest; such steps will vary with geographical factors, local police and court system practices and other factual exigencies).

Our recent decision, *Thompson v. City of Los Angeles and County of Los Angeles*, No. 88-5943, slip op. (9th Cir., Sept. 18, 1989), is inapposite. In that case, we held that petitioner's detention for five days without a probable cause determination did not give rise to a cause of action against the County because he failed to allege that his deprivation occurred pursuant to any county policy or custom. *Thompson*, No. 88-5943, slip op. at 11583-85. Riverside County, by contrast has adopted a policy whereby conducts probable cause determinations at an arrestee's arraignment, and not earlier. It is this specific county policy which violates plaintiff's due process rights in this case.

[5] Riverside County does not claim that it needs more than thirty-six hours to complete the administrative steps incident to arrest. The judge in issuing this injunction considered the size of the county and the location of the detainees. He concluded that thirty-six hours provided the County with ample time to complete its administrative procedures and the County has not presented any facts to the contrary. Moreover, the judge specifically limited the scope of the preliminary injunction to inmates

at the Riverside County Central Jail. The County can easily arrange for probable cause determinations within thirty-six hours for prisoners housed as such a central urban center, particularly since the county magistrates' offices are just across the street from the jail. Furthermore, the judge purposefully did not set any fixed time limit for Riverside's implementation of satisfactory determination procedures in other parts of the County. Therefore, there is no reason to overturn the thirty-six hour provision of the injunction.

[6] We now turn to the district court's requirement that the Counties provide for arrestees' attendance at the probable cause determination, a requirement challenged by San Bernardino County. The Supreme Court in *Gerstein* did not hold that the fourth amendment affords arrestees the right to attend a probable cause determination. The Supreme Court based its holding that warrantless arrestees must receive a prompt probable cause determination upon the premise that warrantless arrestees should be treated on par with those arrested with a warrant. *Gerstein*, 420 U.S. at 120. The fourth amendment, therefore, affords those arrested without a warrant the same right to have the evidence against them reviewed by a neutral and detached magistrate as that enjoyed by those arrested with a warrant. *Gerstein*, 420 U.S. at 112. Those arrested with a warrant have not attended the probable cause determination made before issuance of the warrant. We perceive no basis for holding that the fourth amendment grants warrantless arrestees such a right. Furthermore, since the Supreme Court has expressly held that the probable cause determination is not a "critical stage" of the prosecution, the arrestee has

no right to counsel or to any other of the adversarial safeguards provided at such a stage. *Gerstein*, 420 U.S. at 119, 122. While physical presence of the arrestee may frequently serve the useful purpose of ascertaining the identity of the person arrested, presence is not constitutionally mandated. Our decision in the case at bar complies with our decision in *Bernard*, 699 F.2d at 1024, where we upheld a probable cause determination for warrantless arrestees by ex parte affidavit.

The preliminary injunction entered in *McLaughlin v. County of Riverside* is AFFIRMED. The injunction in *McGregor v. County of San Bernardino* is AFFIRMED IN PART and REVERSED IN PART. That case is REMANDED with instructions that the provision requiring presence be vacated.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD LEE McLAUGHLIN, et al, Plaintiff, v. THE COUNTY OF RIVERSIDE, et al, Defendants.	)	CASE NO. CV87-5597 RG PRELIMINARY INJUNCTION Filed Apr 19 1989

This matter having come on for hearing, the court issues this preliminary injunction. As the court has made clear from the commencement of this case, *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975) is the law of the land (in the Ninth Circuit by *Bernard v. City of Palo Alto*, 699 F.2d 1023 (9th Cir. 1983)). *Gerstein* requires a prompt judicial determination of probable cause for the continued detention of prisoners arrested without warrants. This has generally been held to mean within 24 hours (cf. *Bernard*). In Riverside County the first judicial appearance of a prisoner arrested on a Thursday or Friday occurs the following week. If there is an intervening holiday and a weekend as much as five (5) days of delay after arrest occurs. Such delay before a judicial review of probable cause for continued detention violates *Gerstein*. This court declines to adopt the 24 hour standard, but adopts a 36 hour limit, except in exigent circumstances. This limit was adopted by this court in addressing the same issue in Orange County, *Scott v. Gates*, CV84-8647 RG. Orange County, pursuant to this court's substantially

identical order, has adopted procedures which comply in practice with the mandate of *Gerstein* and *Bernard*.

This preliminary injunction applies to the County of Riverside, its Sheriff, Cois Byrd, and all of their officers, agents, and employees:

1. The County of Riverside, by and through Cois Byrd, its Sheriff, shall initiate and implement the following policy:

> All persons arrested without a warrant and detained in custody *in the Riverside County Main Jail*, located in the City of Riverside, County of Riverside, California, shall, within thirty six (36) hours of the time of the arrest, be taken before a Judge, Magistrate, Court Commissioner, or other authorized judicial officer, for a hearing on determination of probable cause for detention. In the event a prisoner chooses not to attend the proceeding or if circumstances (e.g. hospitalization) render attendance impracticable the hearing may proceed in the absence of the prisoner.

(See *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed. 54 (1975); *Bernard v. City of Palo Alto*, 699 F.2d 1023 (9th Cir. 1983)).

2. The court will retain jurisdiction indefinitely to review the procedures adopted and implemented hereunder, with a view to their compliance in practice with the mandate of *Gerstein* and *Bernard*. This includes the implementation of satisfactory procedures in the Riverside County branch jails as soon as practicable.

3. The above policy shall be effective sixty (60) days after entry of this order.

/s/ Richard A. Gadbois, Jr.
RICHARD A. GADBOIS, JR.
United States District Judge

DATED: 4/19/89

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DONALD LEE McLAUGHLIN, and all others similarly situation [sic], Plaintiffs-Appellees, vs. COUNTY OF RIVERSIDE and COIS BYRD, as Sheriff and individually, Defendants-Appellants.	)	No. 89-55534 DC# CV 87-5597-RAG Central California ORDER FILED JUN 20 1989

Before: SCHROEDER and TROTT, Circuit Judges

Appellees' request for an extension of time until June 13, 1989 in which to file their response to appellants' motion for a stay pending appeal is granted. The response received on June 13, 1989 is ordered filed.

Appellants' motion for a stay pending appeal of the preliminary injunction entered by the district court on April 19, 1989 is granted. *See Artukovic v. Rison*, 784 F.2d 1354, 1355 (9th Cir. 1986).

The court, on its own motion, orders that the appeal be expedited. The reporter's transcript is due by July 7, 1989. Appellant's opening brief and excerpts of record are due July 14, 1989; appellee's brief is due August 4, 1989; the reply brief, if any, is due August 11, 1989. The case will be calendared for argument in September.

CR CAL 6/20/89

NOT FOR PUBLICATION
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DONALD LEE McLAUGHLIN, and all others similarly situated, Plaintiffs-Appellees, vs. COUNTY OF RIVERSIDE and COIS BYRD, as Sheriff and individually, Defendants-Appellants.	)	No. 89-55534 DC# CV 87-5597-RAG (Central District of California) ORDER FILED APR 10 1990

Before: SCHROEDER and BEEZER, Circuit Judges, and KING,* District Judge.

The panel as constituted above has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

*Honorable Samuel P. Kin, Senior U.S. District Judge for the District of Hawaii, sitting by designation.

NOT FOR PUBLICATION
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DONALD LEE McLAUGHLIN, et al.,	)	No. 89-55534
	)	(Central
Plaintiffs-Appellees,	)	California)
	)	
v.	)	ORDER
	)	
COUNTY OF RIVERSIDE, et al.,	)	FILED
Defendants-Appellants.	)	APR 30 1990
	)	

Before: SCHROEDER, Circuit Judge.

The emergency motion filed April 18, 1990, for stay of mandate for 30 days is granted. The stay will be dissolved and the mandate shall issue at the expiration of this time unless a petition for writ of certiorari has been filed.

(2)

No. 89-1817

Supreme Court, U.S.
FILED
JUN 18 1990
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1990

COUNTY OF RIVERSIDE and COIS BYRD,
SHERIFF OF RIVERSIDE COUNTY,

Petitioners,

v.

DONALD LEE MCLAUGHLIN, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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QUESTIONS PRESENTED

1. WHETHER THE NINTH CIRCUIT COURT OF APPEALS APPROPRIATELY CONCLUDED THAT THE COUNTY OF RIVERSIDE MUST GIVE A WARRANTLESS ARRESTEE A "PROMPT" PROBABLE CAUSE DETERMINATION WITHIN THIRTY-SIX HOURS AFTER ARREST IN ORDER TO BE IN COMPLIANCE WITH THE MANDATES OF *GERSTEIN V. PUGH*, 420 U.S. 103 (1975).

2. WHETHER A PLAINTIFF, WHO IS INCARCERATED AT THE TIME HE FILES HIS ACTION IN A COURT HAVING JURISDICTION TO ENTER INJUNCTIVE RELIEF, AND WHO HAS NOT HAD ANY DETENTION HEARING (PROMPT OR OTHERWISE), HAS STANDING, ON BEHALF OF HIMSELF AND A CLASS OF DETAINEES ARRESTED WITHOUT WARRANT, TO ENJOIN A COUNTY'S POLICY OF REFUSING TO GIVE A PROMPT PROBABLE CAUSE DETENTION HEARING.

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No. 89-1817

In The

Supreme Court of the United States

October Term, 1990

COUNTY OF RIVERSIDE and COIS BYRD, SHERIFF OF RIVERSIDE COUNTY,

Petitioners,

v.

DONALD LEE MCLAUGHLIN, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

Respondents Donald Lee McLaughlin, *et al.*, respectfully request that this Court deny the petition for writ of certiorari seeking review of the Ninth Circuit's opinion in this case.

The opinion of the Court of Appeals for the Ninth Circuit is reported at 888 F.2d 1276 and is reprinted in the Petitioner's Appendix at pp. 1-10.

STATUTES INVOLVED

Article I, Section 14 of the California Constitution

§ 14. Felony prosecutions; indictment or information; proceedings before magistrate; right to counsel; interpreter

Sec. 14. Felonies shall be prosecuted as provided by law, either by indictment or, after examination and commitment by a magistrate, by information.

A person charged with a felony by complaint subscribed under penalty of perjury and on file in a court in the county where the felony is triable shall be taken without unnecessary delay before a magistrate of that court. The magistrate shall immediately give the defendant a copy of the complaint, inform the defendant of the defendant's right to counsel, allow the defendant a reasonable time to send for counsel, and on the defendant's request read the complaint to the defendant. On the defendant's request the magistrate shall require a peace officer to transmit within the county where the court is located a message to counsel named by defendant.

A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.

(Added Nov. 5, 1974)

Article I, Section 15 of the California Constitution

§ 15. Criminal cases; speedy public trial; compel attendance of witnesses; appearance and defense; counsel; depositions; double jeopardy; self-incrimination; due process

Sec. 15. The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of

witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant. The Legislature may provide for the deposition of a witness in the presence of the defendant and the defendant's counsel.

Persons may not twice be put in jeopardy for the same offense, be compelled in a criminal case to be a witness against themselves, or be deprived of life, liberty, or property without due process of law.

(Added Nov. 5, 1974)

STATEMENT OF THE CASE

A. The Initial Proceedings

On August 24, 1987, plaintiff Donald Lee McLaughlin filed a complaint for declaratory and injunctive relief on behalf of himself and all others similarly situated in the United States District Court for the Central District of California. Named as defendants were the County of Riverside and Cois Byrd, as Sheriff of the County of Riverside and individually. The complaint stated a claim under 42 U.S.C. § 1983 for violating the civil rights of persons arrested without warrant and detained by the County of Riverside without a "prompt" probable cause determination as required by the parameters of *Gerstein v. Pugh*, 420 U.S. 103 (1975).

On October 13, 1987, plaintiffs moved to certify a class of all present and future Riverside County Jail

pre-trial detainees arrested without warrants and who are denied prompt probable cause hearings.

On November 20, 1987, the County of Riverside and Sheriff Byrd moved to dismiss the First Amended Complaint on the ground that the named plaintiffs lacked standing to prosecute the lawsuit. District Court Judge Gadbois instructed the plaintiffs to add further plaintiffs who were warrantless arrestees incarcerated at the time of filing without having had a prompt probable cause hearing.

On July 25, 1988, the court granted plaintiffs' request to file their Second Amended Complaint, adding as plaintiffs, Johnny E. Jones, Diana Rae Simon, and Michael Scott Hyde. These plaintiffs alleged that they "were arrested without warrants, were taken to the Riverside County Jail, did not receive and have not received prompt probable cause hearings and are still in custody." Defendants' Motion to Dismiss was taken off calendar. On August 23, 1988, defendants filed an answer to the Second Amended Complaint.

On November 14, 1988 the court granted plaintiffs' motion to certify a class consisting of all pre-trial detainees arrested without warrants and held in the Riverside County Jail from August 1, 1987 to the present, and all such future detainees who may be denied prompt probable cause, bail or arraignment hearings.

There is no legally proper probable cause hearing for continued detention held in Riverside County under the present procedure. The entire procedure focuses on the arraignment process, and, in fact, defendants stipulated that "ordinarily the first appearance before a judge or

commissioner of a person arrested without a warrant and still in custody with warrants or holds in Riverside County *is at the arraignment.*" [Emphasis added.] The defendants further stipulated that "if criminal charges have not been filed, the in-custody arrestee, without warrants or holds, is released at about 5:00 p.m. *on the last day for arraignment*. If criminal charges have been filed *the arraignment takes place on the last day for arraignment.*" [Emphasis added.]

In Riverside County, a probable cause detention hearing will not be held for a felony arrest except at the preliminary hearing. The preliminary hearing will not take place until ten days after arraignment. The arraignment can be as many as five days or six days after the actual arrest. A warrantless arrestee is not even told of his right to have a probable cause hearing until the time of arraignment.

Under the Riverside procedure, a person will be arraigned forty-eight hours from the time of his or her arrest, *excluding Saturday, Sunday and Holidays*. Thus, if a person is arrested on Wednesday evening, he will not be *arraigned* until the following Monday, a period of over 100 hours. If the arrest should fall on a holiday weekend, the detention period, *even prior to arraignment*, would be somewhere over 124 hours.

All of this only applies to arraignments. There exists *no set procedure* for either probable cause determinations or detention hearings, which are not routinely provided at arraignment. A close examination of the defendants' advisement to prisoners of their rights indicates that, at the arraignment hearing, prisoners are told through a

remote video hook-up that a person has a right to a hearing to determine whether there is a probable cause for arrest. However, the prisoners must request the probable cause or bail hearing at the time of arraignment, and it is provided at a later date. Often, the first probable cause hearing is at the preliminary hearing, held at least ten days after arraignment. The evidence before the trial court as to this procedure was substantial.

B. The Motion for Preliminary Injunction.

On March 3, 1989, plaintiffs filed a motion for preliminary injunction. Plaintiffs asserted that persons arrested without warrants in the Riverside County Main Jail were not receiving a prompt probable cause determination upon completion of the administrative steps necessary to complete an arrest as required by *Gerstein v. Pugh*, 420 U.S. 103 (1975). Plaintiffs requested the court to issue a preliminary injunction requiring inmates in the Riverside County Main Jail to receive a probable cause determination within thirty-six hours of arrest, to be conducted by an appropriate judicial officer.

Defendants filed their opposition on April 7, 1989. Plaintiffs filed their reply to the opposition to the motion for preliminary injunction on April 13, 1989.

On April 19, 1989, the Honorable Richard Gadbois issued a preliminary injunction merely requiring that the County of Riverside, by and through Cois Byrd, its sheriff, shall initiate and implement a policy that, "All persons arrested without a warrant and detained in custody *in the Riverside County Main Jail*, located in the City of Riverside, County of Riverside, California, shall within

thirty-six hours of the time of the arrest, be taken before a Judge, Magistrate, Court Commissioner, or other authorized judicial officer, for a hearing on determination of probable cause for detention."[1] The preliminary injunction also stated that, if attendance of the arrestee at the probable cause hearing was impracticable, the hearing could proceed without the arrestee.

The district court retained jurisdiction to review the procedures adopted and to monitor implementation of the procedures "as soon as practicable."

C. The Appeal

Notice of appeal of the preliminary injunction was filed May 11, 1989 by the defendants. Defendants also moved for a stay pending appeal in the district court, which was denied. Defendants requested the Ninth Circuit to grant a stay pending appeal, and on June 20, 1989, the Ninth Circuit granted the request for stay and expedited the appeal (Pet. App., p. 14).

The Ninth Circuit consolidated the instant case with a similar action, *McGregor, et al. v. County of San Bernardino*, Ninth Circuit Case No. 89-55542, arising from a district court's order granting a preliminary injunction requiring the County of San Bernardino to provide warrantless arrestees with probable cause determinations

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[1] Judge Gadbois's awareness of the *Gerstein* requirements is evidenced by his forbearance in not making a determination as to rural jails in the County of Riverside. His immediate decision focused on the Riverside County Main Jail and not on the outlying jurisdictions (Pet. App., pp. 8-9, 12.).

within thirty-six hours of arrest. In *McGregor*, the County of San Bernardino challenged the need for the arrestees to appear personally before a magistrate in order to receive a probable cause determination.

On November 8, 1989, the Ninth Circuit issued its opinion affirming the district court's order granting a preliminary injunction with respect to the County of Riverside in the case. The Court found that the named class representatives had standing under *City of Los Angeles v. Lyons*, 461 U.S. 95 (1985) and further found that providing an arraignment time frame as provided for in California Penal Code §§ 825 and 991 (Pet., pp. 3-5) without providing probable cause hearings within thirty-six hours was not in accord with *Gerstein*'s requirement of a determination "promptly after arrest."

D. The Petition for Writ of Certiorari

This petition for Writ of Certiorari seeks to overturn *Gerstein v. Pugh* and *City of Los Angeles v. Lyons*, two of this Court's well established decisions.

In arguing that standards for pre-trial probable cause hearings should be set on a state-wide basis, the petition seeks a reversal of *Gerstein*'s well considered principle of tailoring the time period allowed for a probable cause detention hearing to the *needs* of the local entity. The petitioners also seek a reversal of *Gerstein* because that opinion quite clearly holds that a plaintiff need only demonstrate that he was suffering the harm complained of at the time of filing. In fact, the decision in *Gerstein* is on all fours, factually and legally, with this action. Only

through a reversal of *Gerstein* on both the underlying and the class issues can petitioners succeed.

Further, the petition seeks a reversal of *Lyons* by claiming that plaintiffs lack standing to obtain injunctive relief although they were suffering injury-in-fact when they first filed their claims. *Lyons* makes it quite clear that a plaintiff's standing to obtain injunctive relief arises if the plaintiff is suffering injury from the alleged wrongful actions at the *time the plaintiff files his complaint*. It is only when that is not the case that a plaintiff must demonstrate that "he will again be subjected to the alleged illegality." *City of Los Angeles v. Lyons*, 461 U.S. at 109.

Essentially, the petition seeks a reversal of these two well established opinions and a retrial of the factual issues in the instant case. This court should reject petitioners' invitation to reverse two well reasoned decisions.

REASONS WHY THE PETITION SHOULD BE DENIED

I. NEITHER THE NINTH CIRCUIT'S OPINION OF NOVEMBER 8, 1989 NOR THE RECORD RAISES THE QUESTIONS PRESENTED IN THE PETITION.

This Court in *Gerstein* held that "the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest." *Gerstein v. Pugh*, 420 U.S. at 114. This Court stated that the probable cause determination must "be made by a judicial officer either before or *promptly* after arrest." *Id.* at 869, (emphasis added). As stated so aptly in *Schall v.*

Martin, 467 U.S. 253, 275 (1984), the Court in *Gerstein* "did not mandate a specific timetable" for a probable cause determination, but it did explain that a brief period of detention was justified in order to take the administrative steps incident to arrest. *Id.* at 863.

In affirming the trial court, the Ninth Circuit noted that, "the judge in issuing this injunction considered the size of the county and the location of the detainees. He concluded that thirty-six hours provided the County with ample time to complete its administrative procedures *and the County has not presented any facts to the contrary.*"[2] (Pet. App., p. 8) (emphasis added).

The trial judge specifically limited the scope of the preliminary injunction to inmates at the Riverside County Main Jail. There was no determination by the Ninth Circuit that its decision affirming the preliminary injunction would now be the vehicle for establishing new law in the State of California, nor that it would render unconstitutional certain provisions of the California Penal Code. Defendants mischaracterize the holding of the Ninth Circuit and the preliminary injunction issued by the district court. Nowhere in the opinion issued by the Ninth Circuit is it stated, implied or inferable that the preliminary injunction is to have such a broad scope as to change the

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[2] The trial judge specifically determined it was unnecessary to make any ruling on the constitutionality of state law, stating: "[T]here is a clear difference between the concept of an arraignment and the *Gerstein* process. . . . [T]here's just no reason for me to declare any section of the Penal Code unconstitutional."

procedures in every jurisdiction outside of the County of Riverside.

This Court has recognized the desirability of flexibility and experimentation by the States and stated, "[I]n some States, existing procedures may satisfy the requirement of the Fourth Amendment. *Others may require only minor adjustment, such as acceleration of existing preliminary hearings.*" *Gerstein* v. *Pugh*, 420 U.S. at 124 (emphasis added). The trial judge took great pains not to engage in any judicial overreaching. Rather than make any adjustments to the state statutory scheme, he merely set applicable time tables for the probable cause hearing, and did nothing to affect either the state statute or the County's arraignment procedures. The state arraignment procedures were never at issue.

The preliminary injunction issued by the district court merely follows *Gerstein* by modifying the existing policy for probable cause determinations by the County of Riverside based upon the evidence presented. Defendants' argument that Riverside's policy complies with *Gerstein* v. *Pugh* because they claim it follows the California Penal Code is clearly erroneous and misleading. While the California Constitution and Penal Code do provide for a probable cause hearing to occur within the misdemeanor arraignment process, there is no requirement under California law that the probable cause hearing must await the arraignment.

The flaws in defendants' argument are highlighted by even a cursory reading of the applicable California law. Article I, Section 15 requires that a person in police custody be promptly brought before a magistrate and

formally charged. Article I, Section 14 requires that "[a] person charged with a felony by complaint . . . be taken without unnecessary delay before a magistrate." The above sections are implemented in Penal Code Sections 825 and 991. Section 825 establishes that an *arraignment* must occur within two days of the arrest, excluding Sundays and holidays. (Pet., p. 3). Section 991 applies only to misdemeanors and requires that the probable cause hearing occur at the arraignment only "if the defendant is in custody," and if requested by counsel for the defendant or the defendant. The California procedures outlined by the California Constitution and the Penal Code do not specifically provide for a prompt probable cause hearing for warrantless arrestees. Whether Riverside County complies with state law concerning arraignments is irrelevant to a determination of promptness under *Gerstein v. Pugh*.

Petitioners cite to *Williams v. Ward*, 845 F.2d 374 (2nd Cir. 1988), claiming it provides support for their argument that the Ninth Circuit has misapplied the law as stated by this Court and created a conflict between the Ninth Circuit and the Second Circuit. In fact, *Williams* provides yet another basis for the preliminary injunction issued by the court below. *Williams* provided that a probable cause determination at arraignment within 72 hours of arrest was constitutionally permissible under *Gerstein*. The court in *Williams* found such a length of time permissible due to the vast array of procedural hurdles required by the City of New York's criminal courts system. The Court in *Williams* noted that "the constitutional 'promptness' of a probable cause hearing must be determined in

light of the totality of the processes afforded the defendant." The Ninth Circuit was well aware that it must consider the needs of a particular criminal justice system in determining the length of time permissible for delay between time of arrest and a probable cause determination. In its opinion of November 8, 1989, the Ninth Circuit noted, "Riverside County does not claim that it needs more than thirty-six hours to complete the administrative steps incident to arrest. The judge in issuing this injunction considered the size of the county and the location of the detainees . . . and the County has not presented any facts to the contrary." (Pet. App., p. 8).

The Ninth Circuit opinion also recognized the determination in *Fisher v. Washington Metro, Area Transit Authority*, 690 F.2d 1133, 1139-41 (4th Cir. 1982) that "[b]ecause the administrative steps incident to a particular arrest will necessarily vary with geographical factors and with local police and court system practices as well as with innumerable factual exigencies (including, of course, obstruction) this principle can only be applied on a case-by-case basis." (Citations omitted.)[3]

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[3] The Ninth Circuit also looked at the requirements for probable cause determinations in its other decisions. *Bernard v. City of Palo Alto*, 699 F.2d 1023, 1025 (9th Cir. 1983) held *Gerstein* required a probable cause determination to be made as soon as the administrative steps incident to arrest were completed and that those steps should require only a "brief period," emphasizing that under the circumstances of that case, more time was not required to complete the administrative procedures incident to arrest. *See Kanekoa v. City and County of Honolulu*, 879 F.2d 607, 611 n.1 (9th Cir. 1989), clarifying *Bernard*'s discussion of time limits required under *Gerstein*.

Petitioners' contention that the Ninth Circuit's decision of November 8, 1989 has created a conflict with other circuits (Pet., pp. 17-18) is simply erroneous and without merit. Petitioners misapprehend the law. On the one hand, petitioners state *Gerstein* did not "mandate a specific timetable" and that flexibility and experimentation are desirable (Pet., p. 13). On the other hand, they ask this Court to grant review because the Ninth Circuit's established policy of reviewing "such time periods on a case-by-case basis, without regard to uniform procedures," creates a conflict within the circuits (Pet., p. 19).

Other circuit decisions have applied *Gerstein* in a similar manner to that which the Ninth Circuit did here, by taking into account the law of the jurisdiction and facts relating to a particular process. *See, e.g., Gramameno v. Jewel Co., Inc.*, 797 F.2d 432 (7th Cir. 1986) (thirty-six hours appropriate time for probable cause determination given the necessary "administrative steps"); *Moore v. Marketplace Restaurant Inc.*, 754 F.2d 1336 (7th Cir. 1985) (court remanded determination concerning four hour detention for further determination in light of "necessary administrative steps").[4]

Based on the record before it, the trial court determined that thirty-six hours is an appropriate time frame

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[4] Several district courts have determined a brief delay of twenty-four hours to complete the "administrative" process is sufficient. *See Dommer v. Hatcher*, 427 F. Supp. 1040 (N.D.Ind. 1977); *Sanders v. City of Houston*, 543 F. Supp. 694 (S.D.Tx. 1982) (twenty-four hours sufficient, rejecting one and one-half hour standard of *Lively v. Cullinane*, 451 F. Supp. 999 (D.D.C. 1976); *Mabry v. County of Kalamazoo*, 626 F. Supp. 912 (W.D.Mich. 1986) (ordering that *Gerstein* standards be upheld during a holiday weekend).

for providing the required hearings. Petitioners presented no evidence to the contrary. Defendants have repeatedly stated that their arraignment procedures comply with the requirements of *Gerstein* in that the procedures under California Penal Code §§ 825 and 991 (Pet., pp. 3-5) provide a warrantless arrestee with a probable cause determination hearing at the time of arraignment. This does not address the issue at hand, since there is no showing that defendants' arraignment process satisfies the promptness standards of *Gerstein*.

As support for their argument, petitioners cite to *In Re Walters*, 15 Cal. 3d 738 (1975). While the court in *In Re Walters*, 15 Cal. 3d at 750, stated that "arraignment was the most appropriate stage of the proceedings in which to make a judicial determination of probable cause that defendant is being properly detained," the case does not aid in interpreting *Gerstein*'s "promptness" requirement because, *inter alia*, *Walters* dealt only with a probable cause determination of warrantless misdemeanor arrestees.

Petitioners' reliance on *In Re Walters* is flawed for three reasons. First, the case does not address the issue of "promptness." Second, it applies only to misdemeanors, did not address warrantless felony arrestees, and focused only on whether a probable cause hearing was ever granted. Lastly, the case merely set outside limits for the arraignment and did not limit or define in any form the right to a probable cause hearing.[5] Thus, there is no

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[5] Additionally, *In Re Walters* did not address the issue of whether or not the probable cause determination may be made

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support for petitioners' argument that their compliance with state standards passes constitutional muster.

II. THE NINTH CIRCUIT'S OPINION MERELY STATES THAT PLAINTIFFS HAVE STANDING TO SEEK INJUNCTIVE AND DECLARATORY RELIEF ON BEHALF OF THE CLASS AND DOES NOT CREATE ANY CONFLICT WITH THE OPINIONS OF THIS COURT OR THOSE OF THE SEVENTH CIRCUIT COURT OF APPEALS.

The argument advanced by petitioners in their brief that there is a conflict between the opinions of this Court and the circuit courts masks their real hope to have this Court overturn two well established decisions, *Gerstein v. Pugh* and *City of Los Angeles v. Lyons*.

There is no dispute that a plaintiff seeking injunctive relief must demonstrate standing under Article III in

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prior to the two days required by Penal Code § 825. *Youngblood v. Gates*, 100 Cal. App. 3d 1302 (1988) has interpreted Penal Code § 825 to mean that the "two-day" arraignment requirement refers to "days" not "hours." *Id.* at 1313. Thus, the Riverside policy of a "48-hour" detention prior to the probable cause hearing is in direct conflict with the legislative intent of Penal Code § 825. In determining whether follow-up investigations and transportation are unnecessary delay, the *Youngblood* court held that an unnecessary delay can occur prior to the two-day arraignment delay specified by Penal Code § 825, "[These] provisions make clear that the two-day period set forth in Penal Code § 825 is not a limitation on 'necessary' delay. Thus, no unnecessary delay is permissible between the time of arrest and presentation of a magistrate, *even if that presentation takes place within two days*." *Id.* at 1319 (emphasis added).

order to obtain relief. The Ninth Circuit correctly decided that plaintiffs in *McLaughlin* were actually suffering from the harm for which they sought injunctive relief and therefore had standing (Pet. App., p. 6).

At the time of the filing of the Second Amended Complaint, plaintiffs Jones, Simon and Hyde were jail inmates arrested without warrants who did not receive within thirty-six hours, and had not yet received, probable cause determinations. Petitioners attempt to cloud the issues by arguing that plaintiffs must demonstrate that they might again be subjected to the illegality of incarceration without a prompt probable cause hearing.

In *Gerstein v. Pugh*, two individuals who had been subjected to temporary detention without a probable cause hearing filed a class action lawsuit seeking declaratory and injunctive relief requiring the state to provide them and other similarly situated persons with judicial hearings on the issue of probable cause. The trial court certified the class and granted the requested relief.

This Court affirmed the trial court's ruling on the class certification issue although the plaintiffs' pre-trial detention had ended at the time of oral argument and despite the absence in the record of any evidence that they had been incarcerated at the time of class certification. *Id.* at 110 n. 11.

The Court explained that the case "belongs . . . to that narrow class of cases in which the termination of a class representative's claim does not moot the claims of the unnamed members of the class." *Id.* The opinion proceeded to explain that pre-trial detention is by nature temporary. Since it would be unlikely that any given

individual could have constitutional claims decided on appeal before he is arrested or convicted, that individual could suffer repeated deprivations. It was very likely that other persons similarly situated would also be detained under the same allegedly unconstitutional procedures. The Court concluded that the claim was one that was "capable of repetition, yet evading review." *Id.*

Thus, the Court made clear that a class representative whose standing to seek injunctive relief arises from his pre-trial custody may seek injunctive relief on behalf of a class of similarly situated individuals so long as he had standing at the time he first asserted his claim.

Petitioners make the disingenuous argument that the Ninth Circuit's decision is in direct conflict with the Seventh Circuit's decision in *Robinson v. City of Chicago*, 868 F.2d 959 (7th Cir. 1989). Petitioners contend that the facts in *Robinson* were virtually identical to those in this case (Pet., p. 23), but even a cursory look at *Robinson* illustrates the fallacy in that statement. In *Robinson*, plaintiffs sought to challenge the constitutionality of a policy of detaining persons without probable cause in order to allow further police investigation. *The complaint was filed more than one month after the temporary detention had ended.*

Applying *Gerstein*, *Robinson* ruled that while it is not necessary for a class representative in such a case to be incarcerated at the time of class certification or thereafter in order to obtain injunctive relief, there must be a showing that standing existed at the time the plaintiff commenced his action. *Robinson v. City of Chicago*, 868 F.2d at

968. To determine whether the plaintiffs in *Robinson* had standing at the time they filed their complaint, the court looked to the controlling standards of *City of Los Angeles v. Lyons*. *Robinson v. City of Chicago*, 868 F.2d at 966. Since the plaintiffs in *Robinson* were no longer subject to the temporary detention at the time they filed their complaint, the Court ruled they never had standing to seek injunctive relief on behalf of themselves or the class. *Id.* at 968.

Petitioners mislead this Court by presenting an argument premised on the fact that, since plaintiffs did not receive a probable cause determination and such time has now passed, they necessarily lack a direct personal interest in any claim for injunctive relief attempting to obtain a "prompt" probable cause determination. (Pet., p. 24). Such a statement ignores the relevant law in this area. In *Robinson*, the Seventh Circuit interpreted *Gerstein* as creating an "exception" to mootness. *Robinson v. City of Chicago*, 868 F.2d at 968. "[A] class representative's claim must be live when he files the case, even if the representative's case becomes moot before the class is certified." *Id.*

Similarly, in *Williams v. Ward*, 845 F.2d at 380, the court also applied *Gerstein* in ruling that the case was not moot even though the named plaintiffs there no longer had a personal stake in the outcome of the litigation. "Although the named plaintiffs have thus long ago obtained probable-cause reviews of their arrests, this case is of course not moot for the same reason that the class actions in *Schall v. Martin*, 467 U.S. 253 (1984), and *Gerstein v. Pugh* were not mooted by the termination of the claims of the class representatives in those cases." *Id.* at

380 n. 6. As in *Gerstein*, the focus was on whether the plaintiffs had standing when they commenced their action.

These decisions reflect the uniform view of the circuit courts that *Lyons* in no way disturbed the standing holding in *Gerstein*, and that pre-trial detainees arrested without warrants have standing to bring *Gerstein* challenges so long as they file suit while they are so detained and have received no hearing. Nothing in the opinion of this Court suggests a contrary view.

Respondents have demonstrated that they had standing under *Lyons* precisely because *they were incarcerated* without having had a prompt probable cause hearing *at the time of the filing of the Second Amended Complaint*, through which these plaintiffs first asserted their claims in court. Thus, they have standing to challenge the unconstitutional practices and policies of Riverside County, not only on their own behalf, but also on behalf of the other class members.

CONCLUSION

The petition is a request to overturn two established decisions of this Court. Granting review will throw well established law into disarray. The petition's arguments distort the Ninth Circuit's decision. Plenary review by this Court is unwarranted.

For the foregoing reasons, petitioners respectfully submit that the petition for writ of certiorari should be denied.

Dated: June 18, 1990

Respectfully Submitted,

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(3)

No. 89-1817

In The

Supreme Court of the United States

October Term, 1990

COUNTY OF RIVERSIDE and COIS BYRD, SHERIFF OF RIVERSIDE COUNTY,

Petitioners,

v.

DONALD McLAUGHLIN, et al.,

Respondents.

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I.

THIS CASE PROPERLY RAISES THE QUESTIONS PRESENTED IN THE PETITION CONCERNING THE INCORPORATION OF PROBABLE CAUSE HEARINGS MANDATED BY *GERSTEIN v. PUGH*, 420 U.S. 103 (1975) INTO EXISTING STATE PRE-TRIAL CRIMINAL PROCEDURES.

A. The Ninth Circuit's November 8, 1989 Opinion Directly Addressed The Question Of Whether The County Of Riverside's Compliance With California Law Permitting Probable Cause Determinations To Be Made At The Time Of Arraignment Within Two Days Of Arrest Met The Requirements Of *Gerstein v. Pugh*.

Plaintiffs and respondents present a characterization of the proceedings before the district court and Ninth Circuit, that is patently inaccurate. Specifically, plaintiffs argue that the Ninth Circuit neither addressed nor decided, the question of whether provisions of California Penal Code sections 825 and 991 permitting probable cause determinations to be made at the time of arraignment within two days of arrest, met the constitutional "promptness" requirement for probable cause determinations under *Gerstein*. They additionally assert that the County of Riverside, in any event, does not provide a probable cause determination within the time parameters specified by California law. Yet, review of the district court order granting the preliminary injunction, the record before the Ninth Circuit, and indeed the Ninth Circuit's opinion itself, belies plaintiffs' contention.

Despite the statements contained in the respondents' opposition suggesting that the record before the district court indicated that warrantless misdemeanor arrestees were not provided probable cause determinations within two days of arrest at the time of arraignment, and that felony arrestees did not receive such a determination

until the time of preliminary hearing, some ten days after arraignment, the evidence before the district court clearly establishes that the County in fact met the California guidelines for providing probable cause determinations at the time of arraignment. In the district court the County introduced direct evidence that all warrantless arrestees, both those arrested for felonies and those arrested for misdemeanors, were advised at the time of arraignment of their right to receive a probable cause determination at that time. The only evidence plaintiffs presented with respect to probable cause determinations being delayed beyond the time of arraignment, consisted of testimony taken prior to the County of Riverside's institution of a new policy for conducting probable cause determinations – a policy that was in effect at the time of the district court's decision on the motion for preliminary injunction. The evidence before the district court was unequivocal – the County was in full compliance with California law requiring that probable cause determinations be made no later than at the time of arraignment.

Not surprisingly, both the district court and the Ninth Circuit expressly found that the County was providing probable cause determinations in compliance with the provisions of California Penal Code sections 825 and 991, although each court found that providing such determinations within that time frame did not meet the requirements of *Gerstein*. For example, in the order granting preliminary injunction, the district court noted that under the County's system of providing probable cause determinations at the time of arraignment within two court days after arrest, "the first judicial appearance of a prisoner arrested on a Thursday or Friday occurs the following week. If there is an intervening holiday and a weekend as much as five (5) days of delay after arrest occurs." (Petition, App. 11.) Similarly, the Ninth Circuit

also found that the County provided probable cause determinations within the time frame specified in California Penal Code sections 825 and 991, but nonetheless concluded this was "not in accord with *Gerstein*'s requirement of a determination 'promptly after arrest.' " (Petition, App. 7.)

Review of the Ninth Circuit's opinion leaves no doubt that the Court expressly addressed and resolved the question of whether providing probable cause determinations to warrantless arrestees pursuant to California Penal Codes section 825 and 991 met the constitutional requirements set forth in *Gerstein*. Respondents' efforts to re-characterize both the record in this case and the factual premise of the Ninth Circuit's opinion, cannot insulate the Ninth Circuit's departure from controlling precedent from scrutiny by this Court.

B. The Ninth Circuit's Opinion Is Squarely Inconsistent With This Court's Decision In *Schall v. Martin*, 467 U.S. 253 (1984) And The Second Circuit's Opinion In *Williams v. Ward*, 845 F.2d 374 (2d Cir. 1988).

In *Schall v. Martin*, 467 U.S. 253, this Court applied *Gerstein* in rejecting a due process attack on a state statute which allowed juveniles to be detained for a delinquency determination for three and sometimes as much as six days prior to receiving a probable cause determination. The Court found that under *Gerstein*, this delay was permissible, since it resulted from the incorporation of probable cause determinations into existing state pre-trial proceedings which afforded procedural protections far greater than those required by *Gerstein*, for example, an adversarial proceeding with the presence of counsel. In *Williams v. Ward*, 845 F.2d 374, the Second Circuit applied *Schall* in upholding a state procedure providing probable cause determinations at arraignment within 72 hours of

arrest. The Second Circuit expressly rejected the contention that the constitutional "promptness" of a probable cause determination was determined solely by the time needed to complete booking and processing of prisoners, observing that both *Gerstein* and *Schall*, recognized that "additional procedures require additional time [and] indicate that the constitutional 'promptness' of a probable cause hearing must be determined in light of the totality of the processes afforded the defendant." (*Id.* at 386.)

Respondents assert that the Ninth Circuit's opinion in the instant case is consistent with both *Schall* and *Williams*. They argue that both the district court and the Ninth Circuit took into account delays occasioned by providing probable cause determinations at arraignment, but nonetheless found that the County of Riverside could offer no reason for delaying arraignments more than 36 hours. Respondents' contention, however, simply does not bear scrutiny. At no time either in the district court, or on appeal, did respondents *ever* argue that the arraignment procedures utilized by the County of Riverside could be conducted in less than 48 hours of arrest; to the contrary, respondents at all times asserted that the time of arraignment was irrelevant and that what was constitutionally required was an entirely *separate* probable cause proceeding held before a neutral judicial officer. In asserting the "reasonableness" of the 36-hour time period for providing such hearings, plaintiffs focused solely on what they asserted was the time necessary to complete the administrative steps incident to arrest – completion of paperwork and the like.[1]

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[1] As noted in the petition (and ignored by respondents), the 36-hour time period utilized by the district court and

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The Ninth Circuit's November 8, 1989 opinion similarly focuses solely on the administrative steps necessary to complete the arrest process, i.e., completion of paperwork and the like, in determining the constitutional promptness of any probable cause determination. There is no suggestion in the Ninth Circuit's opinion that it found that the County of Riverside could in fact provide warrantless arrestees with arraignment more promptly than two days after arrest; rather, the Court was careful to note that the County did not establish that it could not provide arrestees with probable cause determinations *alone*, within the 36-hour time period specified by the district court. Indeed, in modifying the injunction in this case, the Court did not order the County of Riverside to provide arraignment at an earlier time period, but rather, required probable cause determinations to be made in a separate ex parte proceeding before a neutral officer.

Pursuant to California Penal Code sections 991 and 825, the County of Riverside provides warrantless arrestees with the opportunity for a probable cause determination at the time of arraignment within two days of arrest. As in *Williams*, while the purely administrative steps incident to arrest, such as completion of booking and the like, might consume less time than two days,

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upheld by the Ninth Circuit was not in fact based upon any evidentiary matter presented by plaintiffs with respect to the time needed by the County of Riverside to process prisoners following arrest, or the time necessary to provide them with arraignment. Rather, as the district court's order itself reflects, the 36-hour time period was gleaned solely from a stipulated order entered in another case before the same district court judge, involving a different public entity, *Scott v. Gates*, CV 84-8647. (See Petition, at App. 11.)

providing the additional constitutional protections available at arraignment necessarily requires expenditure of additional time. Under this Court's decision in *Schall*, and as recognized by the Second Circuit in *Williams*, the delays necessitated by providing these additional constitutional protections must be taken into account in determining whether a probable cause determination is constitutionally prompt under *Gerstein*. Neither the district court, nor the Ninth circuit allowed delays occasioned by providing greater constitutional protections at the time of arraignment to be taken into account in judging the constitutional "promptness" of probable cause determinations given in the County of Riverside. In this regard, the Ninth Circuit's decision is flatly inconsistent with this Court's opinion in *Schall*, and with the Second Circuit's opinion in *Williams*. Thus, review is amply warranted.

C. The Ninth Circuit's November 8, 1989 Opinion Is In Conflict With The California Supreme Court's Decision In *In Re Walters*, 15 Cal.3d 738, 126 Cal.Rptr. 239, 543 P.2d 607 (1975).

In *In re Walters*, the California Supreme Court accepted this Court's invitation in *Gerstein* to incorporate probable cause determinations into existing pre-trial proceedings. The California Supreme Court found that *Gerstein*'s requirements would be met if probable cause determination were made at the time of arraignment, i.e., within two days of arrest. *In re Walters* was later codified in Penal Code section 991. The Ninth Circuit's opinion in this case omits any reference to *In re Walters*, even though its decision directly conflicts with the California Supreme Court's conclusion that a probable cause determination conducted as of the time of arraignment within two days of arrest meets the requirements set forth in *Gerstein*.

Respondents assert that *In re Walters* is irrelevant to the constitutional question presented in the instant case. They argue that *In re Walters* does not address the issue of "promptness" of probable cause determinations under California law. Nonsense. As even a cursory review of *In re Walters* reveals, the issue directly before the California Supreme Court was precisely how the probable cause requirement set forth in *Gerstein* could be incorporated into existing California pre-trial procedures. The court explicitly found that *Gerstein*'s requirement of a prompt probable cause determination for warrantless arrestees would be met by providing such determinations at the time of arraignment, which under California law was then required to take place within two days of arrest.

Respondents additionally argue that *In re Walters* applies only to individuals arrested for misdemeanors. This ignores two points. First, even if limited to misdemeanors, *In re Walters* (and its statutory counterpart, Penal Code section 991), still sets statewide standards for providing a significant number of warrantless arrestees with probable cause determinations. Second, since the only issue presented to the California Supreme Court in *In re Walters* concerned application of *Gerstein* to misdemeanors, the Court had no occasion to address its application to felony arrestees. However, there is no reason to believe that the California Supreme Court's reasoning would differ with respect to applying *Gerstein* to felony arrestees. Indeed, based upon the California Supreme Court's decision in *In re Walters*, numerous public entities, including the County of Riverside, currently provide both misdemeanor and felony warrantless arrestees with the opportunity for a probable cause determination at the time of arraignment.

In *In re Walters*, the California Supreme Court accepted this Court's invitation in *Gerstein* to incorporate

probable cause determinations into existing pre-trial proceedings. The Court expressly found that *Gerstein*'s requirements would be amply satisfied by permitting probable cause determination to be made at the time of arraignment, within two days of arrest. That is precisely the time frame followed by the County of Riverside in the instant case, and found constitutionally deficient by the Ninth Circuit. The Ninth Circuit's opinion in this case is in direct conflict with the opinion of the California Supreme Court concerning the constitutionally "prompt" outside time period in which warrantless arrestees may be provided with probable cause determinations. Thus for this reason too, review is warranted.

II.

REVIEW IS WARRANTED BECAUSE THE NINTH CIRCUIT'S OPINION CONFLICTS WITH THE DECISIONS OF THIS COURT AND THE SEVENTH CIRCUIT COURT OF APPEALS CONCERNING ARTICLE III STANDING REQUIREMENTS.

In its November 8, 1989 opinion, the Ninth Circuit concluded that the mere fact that the named plaintiffs in this action continued to suffer injuries as the result of the their failure to receive a prompt probable cause determination, i.e., that they remained in custody, necessarily provided them standing to seek injunctive relief. Respondents echo this position in their opposition, and further assert that this Court's decision in *Gerstein* supports their position. The contention is meritless.

First, the passage from *Gerstein* cited by respondents does not discuss the issue of *standing* with respect to the ability of pre-trial detainees to obtain injunctive relief; rather it solely addresses the question of whether a properly certified class action in which the named plaintiffs *had standing at the outset* will be rendered moot by the fact

that the named plaintiffs are not in custody at the time of certification. (See 420 U.S. at p. 110 fn.11.) Second, *Gerstein* was decided almost a decade before *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983) and did not purport to address, much less resolve, any question with respect to the individually named plaintiffs' standing to bring the action for equitable relief.

Respondents' attempt to distinguish the Seventh Circuit's decision in *Robinson v. City of Chicago*, 868 F.2d 959 (7th Cir. 1989) is similarly unavailing. Respondents assert that in *Robinson*, the standing question was resolved based solely on the fact that the named plaintiffs were not in custody at the time the complaint was filed. Yet, review of *Robinson* belies this argument. In finding the named plaintiffs lacked standing, the *Robinson* court observed that *by its very nature* governmental conduct with respect to pre-trial detention is necessarily "limited temporally" and thus provides "no significant possibility that a putative plaintiff *would have enough time while detained* to file suit" in order to obtain standing for purposes of seeking injunctive relief. (See 868 F.2d at 968; emphasis added.) As this passage indicates, the *Robinson* court was not concerned that an individual would not be *in custody* long enough to file suit, but that even as the arrestee was in custody, the time in which to remedy the alleged violation through injunctive relief by providing a "prompt" probable cause hearing, would have already passed. This is, of course, precisely the situation in the instant case. The named plaintiffs alleged they were in custody and had not received constitutionally prompt probable cause determinations; yet, under their theory of the case, even if the injunction was issued on the date the complaint was filed, the County could not have redressed their particular injuries, since the time in which to

provide *them* with a "prompt" probable cause hearing had, according to their allegations, already passed.

As this Court held in *Lyons*, the mere fact that a plaintiff continues to suffer injury by reason of a defendant's conduct does not create standing to assert a claim for injunctive relief under Article III. Under such circumstances a plaintiff may have a damage remedy; however, to assert a claim of injunctive relief a plaintiff must demonstrate that he or she will again be subject to the unconstitutional conduct sought to be enjoined. Here, none of the plaintiffs alleged that they would again be arrested and held without receiving a constitutionally prompt probable cause determination. Thus, under *Lyons*, the named plaintiffs clearly lacked standing to prosecute the instant action. By declining to apply the clear holding of *Lyons* to the instant case, the Ninth Circuit has effectively invited an entirely new class of lawsuits to be filed in the federal courts – lawsuits that this Court expressly found in *Lyons* to be foreclosed by Article III standing requirements. For this reason too, review should be granted.

CONCLUSION

For the foregoing reasons, petitioners respectfully submit that the petition for writ of certiorari should be granted.

Respectfully submitted,

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No. 89-1817

IN THE

Supreme Court of the United States

October Term, 1990

COUNTY OF RIVERSIDE, et al.

Petitioners,

v.

DONALD LEE McLAUGHLIN, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF AMICUS CURIAE COUNTY OF LOS ANGELES and SHERMAN BLOCK, SHERIFF OF LOS ANGELES COUNTY IN BEHALF OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE COUNTY OF LOS ANGELES and SHERMAN BLOCK, SHERIFF OF LOS ANGELES COUNTY IN BEHALF OF PETITIONERS

The County of Los Angeles is a political subdivision of the State of California. [1] It is responsible for a Municipal Court System with 24 separate courts, one of which has 7 branches, and 187 judges, and a Superior Court system with a Central Criminal Court, eleven (11) branches and 238 judges, spread throughout the County. Arraignments and attendant probable cause hearings are usually held in the municipal court system.

Sherman Block is the Sheriff of Los Angeles County. As such, he is an officer of the County [2] whose duties include arresting and taking before Magistrates all persons who have committed a public offense, [3] taking charge of the County

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[1] California Constitution; Article XI; California Government Code sections 23000, 23002, 23003.

[2] California Government Code section 24000(b).

[3] California Government Code section 26601.

jail and the prisoners in it, [4] and transporting prisoners to and from the jails. [5] As is shown by this case, the Sheriff may be sued by a criminal defendant who claims that he has not received a probable cause determination in a timely manner. In Los Angeles County, the Sheriff operates five(5) jails, plus jails in each of 23 stations, which, at any one time, house approximately 23,000 inmates.

The Sheriff's Department has more than 8000 sworn deputies and conducts approximately 115,000 arrests per year. There is a much heavier incidence of crimes and arrests on weekends and holidays than on weekdays.

Los Angeles County covers approximately 4,000 square miles with a

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[4] California Government Code Section 26606, Penal Code Section 4000, et seq.

[5] California Government Code section 26747.

population of approximately 8,171,000. It contains 86 municipalities, 47 of which have their own police force and many of which have their own jails. The Sheriff provides direct law enforcement in the unincorporated area of the county and in those cities which have contracted for the service.

The County of Los Angeles and Sherman Block, as its elected Sheriff, bear the burden of balancing fiscal, security, constitutional and public policy concerns as they meet their obligation safely to detain large numbers of pretrial detainees and short term sentenced inmates in an enormous and largely urban setting.

In the County of Los Angeles, as in the County of Riverside, this difficult balancing process has been affected by Federal court intervention at the behest of inmates or classes of inmates.

Any determination by this Court which addresses the proper reach of Federal

constitutional standards for confinement of pretrial detainees or of probable cause hearings will necessarily affect the dynamic within which our correctional system, and those of other cities and counties across the state, must set priorities and allocate resources.

For these reasons, the County and Sheriff which have long and intensive experience with the implementation and operation of arrests, bookings, detention and probable cause hearings, and which must oversee and regulate a complex, urban correctional system and municipal court system within the context of Federal constitutional standards, respectfully request leave to present their views concerning the appropriateness of the decision below requiring that a probable cause determination be made before a Magistrate within thirty-six (36) hours of arrest. The County and Sheriff will not review the legal issues so thoroughly and

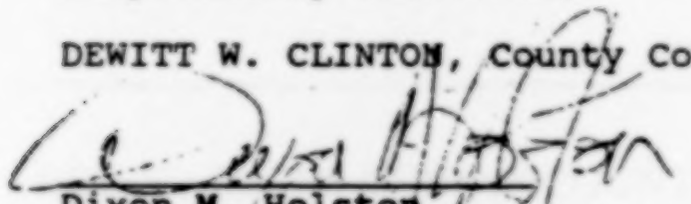
ably addressed by the parties. They seek more to elucidate issues essential to judging whether the California Rule, as established by the State Supreme Court and Statute, of holding the hearing at arraignment, within two (2) days after arrest, is justified and reasonable, by reference to their unusual expertise and experience.

WHEREFORE, the County and Sheriff respectfully move that the attached brief amicus curiae be accepted and filed with the Court. [6/]

Dated: November 14, 1990

Respectfully submitted,

DEWITT W. CLINTON, County Counsel



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[6/] Consent to the filing of a brief of an amicus curiae need not be had when the brief is presented by a state or a political subdivision of a state.

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STATEMENT OF INTEREST AND SUMMARY OF ARGUMENT

The County of Los Angeles (hereinafter "County") is a political subdivision of the State of California.[1] Sherman Block is the Sheriff of Los Angeles County (hereinafter "Sheriff") and an officer of the County.[2]

The County is responsible for the budget, staffing, facilities, administrative positions, security, etc. for the Superior Court of Los Angeles County, with its central criminal courts facility and eleven (11) branches and a municipal court system with 24 separate courts, one of which has seven (7) branches.

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[1] California Constitution, Article XI; California Government Code sections 23000, 23002 and 12003.

[2] California Government Code section 24000(b).

The views and experience of the County and the Sheriff may be useful in the resolution of the issues before the court in the following respects: First, the California time rules were established in response to, and in accord with the Gerstein, infra, mandates and are reasonable; second, the California time rules provide a uniformity in probable cause determinations throughout the courts fo the state which is desirable; and, third, the California rules give even greater rights to misdemeanors arrestees then were mandated by Gerstein, infra, and should be upheld.

The County and the Sheriff are placed in a very awkward position by the McLaughlin decision. No two jail systems or court systems are alike, and the needs and capabilities of each differ. The Court and Sheriff are complying with the law of the state on the time within which they are providing probable cause

determinations, they are vulnerable to being sued in federal court for failure to provide the determination within a reasonable time, as to any one of their many jails and/or courts under the McLaughlin theory. Further, separate trials could produce separate "reasonable time limits" for each of the many jails and courts. This result would be virtually unworkable in view of the many jails, courts and great numbers of prisoners. If decisions similar to McLaughlin were arrived at with respect to the Los Angeles County jails and courts, arrangements would have to be made to open courts, transport prisoners, provide security, drastically alter jail routines, etc., on holidays and weekends. The Court's experience with night courts shows that the expense for each court to be opened would be equivalent to funding an entire new court. This would be exclusive of the cost and burden to the Sheriff.

This court place an extreme cost and burden on an already overburdened and under funded system.

ARGUMENT

I

CALIFORNIA CASE LAW AND STATUTES REGARDING THE TIME WITHIN WHICH A PROBABLE CAUSE DETERMINATION MUST BE MADE ARE IN ACCORD WITH GERSTEIN AND SHOULD BE UPHELD.

First, the California rules with respect to the time within warrantless arrestees must be given a probable cause determination were established as a good faith response to the decision of this Court in Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d. 54 (1974). In the face of Florida law which would often delay such a determination more than thirty (30) days after arrest, the Court held that the Fourth Amendment requires a

judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest, and that the determination must be made either before or promptly after arrest. Gerstein, supra, p. 114 and 125.

The California Supreme Court, out of respect and concern for the decision of this Court in Gerstein, accepted and decided a case later that year which case could otherwise have been considered moot. In Re Walters 15 C 3d. 738, 743-4, 126 Cal.Rptr. 239,543 P. 2d. 607. Consistent with Gerstein, it held that, unless waived, a judicial determination of probable cause is required in every case where a defendant charged with a misdemeanor is detained awaiting trial, and that the determination is to be made at the time of arraignment or bail setting which usually takes place simultaneously within two (2) days after arrest.

Walters, supra, p. 747 and 750; California Penal Code sections 822 and 825.

Penal Code section 825 provides in relevant part as follows:

> "The defendant must in all cases be taken before the magistrate without unnecessary delay, and, in any event, within two days after his arrest, excluding Sundays and holidays; provided, however, that when the two days prescribed herein expire at a time when the court in which the magistrate is sitting is not in session, such time shall be extended to include the duration of the next regular court session on the judicial day immediately following . . ."

Penal Code section 991, enacted in 1980, provides that an in custody misdemeanor defendant has a right to a

probable cause determination at the time he appears before the magistrate for arraignment. Lastly, certain police agencies tried to extend the time limit by interpreting the two days as 48 hours. Under this reasoning, if a defendant were arrested on a Tuesday evening, the 48 hours would expire Thursday evening. Since no court was in session in the evening, the time would be extended through Friday. It was held that this interpretation violated the defendant's rights, that "two days" means "two days", and that under the example above, the defendant must have his hearing by the end of the day on Thursday. Youngblood v. Gates, 100 Cal.App.3d 1302, 1313, 246 Cal.Rptr. 775. (Petn. for Review denied August 18, 1988). In other words, the California courts and legislature have attempted in good faith to apply Gerstein in a fair and uniform manner, and to resist any efforts to erode its doctrine.

II

THERE IS A NEED FOR UNIFORMITY AS TO THE TIME LIMITS FOR A PROBABLE CAUSE DETERMINATION WITHIN THE COURTS AND JAILS OF THE 58 COUNTIES AND WITHIN LOS ANGELES COUNTY WHICH SUGGEST THAT THE CALIFORNIA LAW SHOULD BE UPHELD.

Secondly, there should be a uniform rule in a County as large and complex as Los Angeles, and in a state as large and complex as California. If the McLaughlin decision is upheld, there could be trials as to what constitutes a reasonable time for the probable cause determination not only in every county in California, but as to every jail and court system in every county. With different courts interpreting facts from differing agencies, there might well be holdings that 36 hours is reasonable in Riverside,

48 hours as to Los Angeles central jail, 28 hours as to Long Beach jail, 51 hours in San Francisco, etc. Further, each venue could be retried every time counsel thought they perceived a reason for a changed-time requirement. Would there be a different time for a Friday/Saturday/ Holiday arrest, when the frequency of crime and arrests are higher, than for a weeknight? Shall there be a lower time requirement for an arrestee in Beverly Hills, where the incidence of crime is low, than for an arrestee in South Central Los Angeles, where the number of arrestees is higher? Such a result, on its face, would be chaotic, and should not be countenanced by this court. The writ of certiorari should be granted.

III

THE CALIFORNIA LAW AS TO TIME LIMITS FOR PROBABLE CAUSE DETERMINATIONS SHOULD BE UPHELD AS IT GRANTS GREATER RIGHTS TO MISDEMEANOR ARRESTEES THAN IS MANDATED BY GERSTEIN.

Lastly, the California law in applying the Gerstein mandate should be supported as giving the in-custody misdemeanor arrestee greater rights than were required by Gerstein. In Gerstein, this court approved an "informal procedure" in determining probable cause, and held that adversary safeguards at this stage such as right to counsel, confrontation and cross-examination were not required, Gerstein, supra, p. 119-122. Further, this court recognized that different approaches would be approved.

". . .We recognize that state systems of criminal procedure vary widely. There is no single preferred pretrial procedure, and the mature of the probable cause determination usually will be shaped to accord with a State's pretrial procedures viewed as a whole. While we limit our holding to the precise requirement of the Fourth Amendment, we recognize the desirability of flexibility and experimentation by the States. It may be found desirable, for example, to make the probable cause determination at the suspect's first appearance before a judicial officer, (citation), or the determination may be incorporated into the procedure for setting bail or fixing other of pretrial

release. . ." Gerstein, supra, p. 123-124.

The California courts and legislature have implemented Gerstein by linking the probable cause determination to the arraignment, which in turn must be done within two (2) days. They have added rights not required by Gerstein as follows: Gerstein hearing required even when misdemeanor suspect is arrested on a warrant; right to counsel at hearing; right to be present at hearing. Walters, supra, p. 749-750.

In summary, it is submitted that the uniform two (2) day rule throughout the state is reasonable, and that the speculative benefit of any minor reduction in this time which might be possible in individual courts is far more than offset by the additional rights, such as right to counsel, given to the misdemeanor arrestee.

IV.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Dated: November 14, 1990

Respectfully submitted,

DEWITT W. CLINTON
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Deputy County Counsel

Counsel of Record for Amicus Curiae

No. 89-1817

Supreme Court, U.S.
FILED
NOV 15 1990
JOSEPH F. SPANIOL, JR.

In The

Supreme Court of the United States

October Term, 1990

COUNTY OF RIVERSIDE and COIS BYRD, SHERIFF OF RIVERSIDE COUNTY,

Petitioners,

v.

DONALD McLAUGHLIN, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX
VOLUME I

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Certiorari Granted October 1, 1990

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Reporter's Transcript of February 6, 1989, Status Conference

Notice of Motion and Motion for Preliminary Injunction and Exhibits, filed March 3, 1989

Stipulation re First Appearance, filed March 24, 1989

Memorandum of Points and Authorities in Opposition to Motion for Preliminary Injunction, filed April 7, 1989

Plaintiffs' Reply Memorandum and Exhibits, filed April 13, 1989

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Notice of Appeal, filed May 11, 1989

Order of the United States Court of Appeals for the Ninth Circuit granting stay pending resolution of appeal, filed June 20, 1989

Opinion and Judgment of the United States Court of Appeals for the Ninth Circuit, filed November 8, 1989

Order of the United States Court of Appeals for the Ninth Circuit denying petition for rehearing and suggestion for rehearing en banc, filed April 10, 1990

Order of the United States Court of Appeals for the Ninth Circuit granting emergency motion for stay of mandate, filed April 30, 1990

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD LEE McLAUGHLIN, JOHNNY E. JONES, DIANE SIMON, MICHAEL SCOTT HYDE, BRETT HALE, DAVID KEISER, SHARON SWEENEY and LAVONNE HINDS, and all others similarly situated, Plaintiffs, vs. THE COUNTY OF RIVERSIDE and COIS BYRD as Sheriff and individually, Defendants.	CASE NO. CV 87-5597 RG SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CLASS ACTION (Filed JUL 25 1988)

1. This is an action at law to redress the deprivation by defendants of plaintiffs' rights, privileges and immunities arising under the Constitution and Laws of the United States and the deprivation under color of law by the individual defendants of these rights (First, Fourth, Eighth and Fourteenth Amendments of the Constitution of the United States, 42 USC Section 1983 by failing to promptly provide probable cause, bail and arraignment hearings for plaintiffs. Instead named plaintiff DONALD LEE McLAUGHLIN was arrested without a warrant in early August, 1987, and taken to Riverside County Jail. Plaintiff DONALD LEE McLAUGHLIN was not arraigned for five days which he spent in jail during which time no charges were filed against him and he never saw a Judge. Plaintiffs JOHNNY E JONES, DIANA RAY SIMON and MICHAEL SCOTT HYDE were arrested without warrants, were taken to the Riverside County Jail, did not receive and have not received prompt probable cause and bail hearings and are still in custody. Plaintiffs BRETT HALE and DAVID KEISER are pretrial detainees in the Riverside County Jail. SHARON SWEENEY and LAVONNE HINDS are pregnant women prisoners of the Riverside County Jail. They are and have been forced to sleep on the floor, sleep on upper bunks and have been denied adequate food and medical care.

2. The jurisdiction of this Court is invoked under 28 USC 1331, this being an action arising under the Constitution and Laws of the United States and under 42 USC 1343, this being an action authorized by law to redress the deprivation under color of the State law, statute, ordinance, regulation, custom and usage of a right, privilege and immunity secured to plaintiffs by the First,

Fourth, Eighth and Fourteenth Amendments of the Constitution of the United States.

3. Defendant COUNTY OF RIVERSIDE (hereinafter "County") is a unit of local government, duly formed and authorized under the laws of the State of California. As part of its duties, defendant County provides local jail facilities, specifically the Riverside County Jail located in the City of Riverside, County of Riverside. Through the Sheriff's Department of the County of Riverside, and other County agencies, defendant County also provides supervision to persons in the Riverside County Jail.

4. Individual defendant, COIS BYRD is the Sheriff of the County of Riverside, responsible for the Riverside County Jail and its inmates.

5. At all times pertinent to this Complaint, the named Individual Defendant was acting under the color of his official capacity and the ordinances and regulations of Riverside County, and the laws of the State of California.

7. The named plaintiffs are residents of the United States and the State of California.

8. During all times mentioned herein, the defendants, and each of them, separately and in concert, acted under color and pretense of law, to wit, under color of the statutes, ordinances, regulations, customs and usage of the State of California and the County. Each of the defendants herein, separately and in concert engaged and conspired in the illegal conduct herein mentioned to the injury of plaintiffs, and deprived the plaintiffs of the rights, privileges and immunities secured to plaintiffs by

the First, Fourth, Eighth and Fourteenth Amendments to the Constitution of the United States and the laws of the United States, pursuant to the practice and policy of defendant County.

9. At all times plaintiffs who were arrested without warrants were held in the Riverside County Jail without prompt probable cause hearings, bail hearings or arraignment. The Riverside County Jail is severely overcrowded, plaintiffs often being forced to sleep on the floor of "triple bunked" cells. Plaintiffs are also denied adequate access to counsel, adequate visitation, are subject to excessive force by guards and have been denied adequate food and medical care.

10. The deprivations suffered by plaintiffs were and are the result of ongoing patterns of conduct and practices of defendants, including defendant COUNTY OF RIVERSIDE and defendant BYRD, and unless and until ordered by this court, excessive detention of warrantless arrestees before probable cause hearings, bail hearings and arraignment, floor sleeping, denial of access to counsel, visitation and excessive force, and for pregnant prisoners, adequate food and medical care, will continue to deprive inmates of the Riverside County Jail of their constitutional rights.

11. Defendants are violating Constitutional standards for prompt post arrest, judicial determination of probable cause, and for bail and for arraignment. An actual controversy exists between the parties as to the interpretation of the Constitutional mandates for probable cause, bail and arraignment hearings. Plaintiffs, but not defendants, believe there should be *no delay* between

the time of arrest and presentation to a magistrate that is not necessary. The plaintiffs ask that this court adjudicate and issue a declaratory judgment on this issue.

CLASS ACTION ALLEGATIONS

12. The named plaintiffs as representatives of a class within the meaning of Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

13. The members of the class are so numerous that joinders of all of them is impractical. there [sic] being more than 500 pre-trial detainees in the Riverside County Jail at any one time.

14. The members of the class are readily identifiable from the defendants' records.

15. There are questions of law and fact common to the class; their class claims predominate over any individual claim.

16. The claims of the named plaintiffs are typical of the claims of the class, in that plaintiffs are warrantless arrestees who did not, without unnecessary delay, receive prompt probable cause, bail and arraignment hearings, and as a result were unconstitutionally deprived of their liberty and freedom and pretrial detainees forced to sleep on the floor, denied adequate access to counsel and visitations.

17. The defendants have acted or refused to act on grounds generally applicable to the class by failing to provide prompt probable cause and bail hearings.

18. The named plaintiffs will fairly and adequately protect the interests of the class.

19. The class consists of all present and future prisoners in the Riverside County Jail including those pretrial detainees arrested without warrants and held in the Riverside County Jail from August 1, 1987 to the present, and all such future detainees who have been or may be denied prompt probable cause, bail or arraignment hearings.

20. Plaintiffs do not propose class notice at this time, consistent with the practice in the related cases.

WHEREFORE, plaintiffs pray:

1. For an order and judgment requiring that the defendants and the COUNTY OF RIVERSIDE provide in-custody arrestees, arrested without warrants, prompt probable cause, bail and arraignment hearings; forbidding floor sleeping; providing adequate access to counsel; adequate visitation; ending the use of excessive force; and, adequate food and medical care for pregnant prisoners.

2. For a declaratory judgment as prayed for;

3. For reasonable attorneys fees and costs of suit;

4. For such other relief as may be necessary and proper to effect the purposes of this litigation.

DATED: July 25, 1988

/s/ Richard P. Herman
RICHARD P. HERMAN
JAMES GLICK
PAUL W. COMISKEY
Attorneys for Plaintiffs

NO. CV 87-5597-RG

(Caption Omitted In Printing)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, February 6, 1989

COPY

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[p. 3] LOS ANGELES, CALIFORNIA; MONDAY, FEBRUARY 6, 1989; 11:00 AM

(Proceedings in unrelated matters heard.)

THE CLERK: Page 3, Item Number 6, CV £7-5597-RG, Donald Lee McLaughlin vs. The County of Riverside.

Counsel.

(Pause.)

THE COURT: Let's call the Gutierrez matter.

(Proceedings in unrelated matters heard.)

THE COURT: Okay. Let's talk about Riverside.

MS. VICTORINE: Good morning, your Honor. Pamela Victorine for Riverside County.

I guess we're at a somewhat different stage, hopefully, then San Bernardino. The Board of Supervisors have authorized us to propose a settlement of this lawsuit on certain terms and conditions, which we presented.

THE COURT: Yes, and I don't have any problem with them. I think the proposal was basically okay. The detainee does not have to waive the right to appear, because I don't think he's got the right, to begin with. The right – I think it's a good idea. You heard me say that, and I'll say it again.

MS. VICTORINE: Okay.

THE COURT: It has a very nice appearance to it, and sometimes appearances mean something in matters like this. And if he does appear, for God's sake, you know, he doesn't have to stand up and rail at the Court [p. 4] about, or the judicial officer, about anything like bail or counsel or any of that, but for heaven's sake give him two phone calls. That's just common sense.

MS. VICTORINE: Well, I hope we're at a stage where we can start maybe drafting something.

I think – Mr. Herman and I spoke again on Thursday. He has concerns that the person maybe should be able to say something about medical treatment. The other –

THE COURT: Well, there's another procedure for that, or there ought to be within the jail. I'm not going to get involved – I'm not going to run the Riverside County Jail, notwithstanding the fact that Mr. Herman would love to have me do that and then pay him for overseeing what I'm doing while I'm running the Riverside County Jail.

MR. HERMAN: Oh, your Honor, certainly not.

THE COURT: No way. It isn't going to happen.

MS. VICTORINE: I believe –

THE COURT: No, I would just – I'd automatically give him, the person, if the person appears, if it's practicable for the person to appear, I'd automatically give him two telephone calls. And the procedure for getting medical treatment in the jail is another matter that doesn't have anything to do with *Gerstein*, and I'm just talking [p. 5] *Gerstein* here.

MS. VICTORINE: Okay, that's fine.

THE COURT: My only problem with your papers is that if you think I'm going to go roaming through the Penal Code of the State of California declaring everything in there unconstitutional, you're sorely mistaken.

MS. VICTORINE: I think it's –

THE COURT: It simply is unnecessary to do that. I mean, there's a clear difference between the concept of arraignment, as expressed in the Penal Code, and the *Gerstein* process. There's a clear difference, and there's just no reason for me to declare any section of the Penal Code unconstitutional. I'm sure it would make your supervisors real happy if I did that and it would give them a great excuse to do what they're going to have to do anyway, but I don't know any Federal Judge in his right mind that would be tempted to do that.

So basically your program is acceptable. I think you ought to put it into fine print, and we'll look at it.

MS. VICTORINE: Okay, your Honor. Would it be possible that we could have something in the order that would say that the procedures that they're now doing doesn't comply with the constitutional dictates?

THE COURT: The arraignment process does not. [p. 6] It clearly does not comport with *Gerstein*. I'll be happy to say that, if you give me some language to that effect. But don't tell me to declare the Penal Code of California unconstitutional. That's just a little much.

MR. HERMAN: Your Honor, we've had some discussions with Riverside, both Miss Victorine and with Miss Anderson of County Counsel's Office. I've indicated that I would prefer not to have all the detail about what the prisoner can't do in the record; that what we should stipulate to is a *Gerstein* hearing or *Gerstein* determination within 36 hours. And we've also had some discussions about the language of saying that Penal Code provisions

are insufficient to meet the constitutional mandates of *Gerstein*. So I think that we may be able to work out language –

THE COURT: I would agree with you, that I don't see any necessity for cluttering up the papers with all the things that the inmate can't do. Let's just talk about what's happening.

MR. HERMAN: At the same –

THE COURT: I'm going to have continuing jurisdiction over this for a period of time. And I must say that I'm very pleased at the paucity of occasions that this whole matter has been brought to my attention from Orange County. It's been quite rare.

[p. 7] MR. HERMAN: No, we've done very well there and –

THE COURT: It works; okay?

MR. HERMAN: That's true. It works; both sides are satisfied. We haven't had to come back to court.

The problem I have, your Honor, is that both in Riverside and in San Bernardino I think the time is pretty much common. I've informed County Counsel of both counties that I'm going to two-track everything, and I'm going to finish the discovery in case we have to come in for preliminary injunction. At least at the main facility, and that –

THE COURT: I don't know how many times I have to say this. It is an extravagant waste of county funds to fight this litigation on principle, because you can't win.

MR. HERMAN: I understand that.

THE COURT: I wasn't talking to you.

MR. HERMAN: I know, but it's time to wrap it up.

THE COURT: Well, I agree with you. It's going to get wrapped up. Okay.

MR. HERMAN: And that's what we're going to do. And in the meantime we will be talking about language for Court orders and hopefully we'll wrap it up.

[p. 8] THE COURT: Okay.

MR. HERMAN: One thing that I have –

THE COURT: Just call us and let us know when you want to put it on calendar again.

Yes?

MR. HERMAN: One thing that I have talked about is it may be advisable in both counties to start with the main jail, the Riverside County Jail in Riverside and the San Bernardino County Jail in San Bernardino and then work out –

THE COURT: Get it started; I agree with you.

MR. HERMAN: – and that's at least where some of the focus will be now.

THE COURT: Okay, that's fine.

MS. VICTORINE: Would the Court want to give us a date certain that we could we [sic] working toward?

THE COURT: I will, if you want. Thirty days.

Give me a date, please.

If you want me to hold the supervisors feet to the fire, I'm about to do it.

MS. VICTORINE: Well, your Honor –

MR. HERMAN: Your Honor, as far as Riverside is concerned, I'm going to set some depositions. I'm applying to move for a preliminary injunction next month, so I don't think there's any reason to set a date.

[p. 9] THE COURT: Well, I'm going to set a date.

MR. HERMAN: I'm going to come in and get them if we can't resolve it.

THE COURT: Thirty days, please.

MS. VICTORINE: The Monday thirty days from now, I don't have my calendar.

THE COURT: The clerk will give it to us.

THE CLERK: March 6, 1989.

THE COURT: All right.

MS. VICTORINE: At 11:00 a.m.?

THE COURT: Yes.

MS. VICTORINE: Okay, fine, thank you.

THE COURT: Next case.

MR. HERMAN: Thank you, your Honor.

(Proceedings concluded.)

* * *

(Certification Of Transcript Omitted In Printing)

CASE NO. CV 87-5597 RG

NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

(Filed Mar 3 1989)

(Caption Omitted In Printing)

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TO DEFENDANTS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that plaintiffs herein will move and hereby move this court for a preliminary injunction on April 3, 1989, at 10:00 a.m. Said injunction will bar the defendants from keeping persons in custody in the Riverside County Jail without affording them a prompt probable cause for detention hearing. This motion is based on these moving papers and exhibits, the file in this case, the depositions of defendants and their employees, taken and in progress, and such other oral and documentary evidence as the court may admit at the hearing.

DATED: March 2, 1989

/s/ Richard P Herman
RICHARD P. HERMAN
JAMES GLICK
PAUL W. COMISKEY
Attorneys for Plaintiffs

MEMORANDUM

I

STATEMENT OF THE CASE

Plaintiffs are prisoners arrested without warrants and held by Riverside County in Riverside County Jails. Prisoners arrested on a Thursday or a Friday do not see a Judge (or are not released for excessive detention before their first arraignment) until, at least, the following Monday or Tuesday, a delay of 72 hours or, on three-day weekends 96 hours or more (Exhibit 2). Plaintiffs are entitled to a prompt judicial determination of probable cause for continued detention. From the experience in Orange County, as many as one in four warrantless arrestees will be released upon a determination of no probable cause for continued detention (Exhibit 3). The court should also consider that newly arrested prisoners (i.e., the members of *this* class) usually must sleep on the floor in an antiquated and unconstitutionally overcrowded jail (416 beds for more than 650 prisoners).

II

THE LAW

In 1975, the United State Supreme Court held that the law of this land is that an adult arrested without a

warrant and held in detention must be provided with a prompt judicial probable cause for detention determination. *Gerstein v. Pugh*, 420 U.S. 103 (1975). The Ninth Circuit, in line with virtually every other court, has affirmed a "24 hour" standard as reasonable. *Bernard v. City of Palo Alto*, 699 F.2d 1023, 1025 (9th Cir. 1983) (per curiam); cf. *Sanders v. City of Houston*, 543 F.Supp. 694, 701-03 (S.D. Tex. 1982, aff'd without opinion, 741, F.2d 1379 (5th Cir. 1984); *Lively v. Cullinane*, 451 F.Supp. 1000, 1004 (D.D.C. 1978); cf. *Dommer v. Crawford*, 653 F.2d 289 (7th Cir. 1981).

"[sic] Almost all of these courts have determined that 'prompt' means a period of hours rather than days. See *Bernard v. City of Palo Alto*, 699 F.2d at 1025 (twenty-four hour maximum; however detention for less than twenty-four hours could run afoul of fourth amendment rights in individual case); *Sanders v. City of Houston*, 543 F.Supp at 701-03 (twenty-four hour maximum); *Lively v. Cullinane*, 451 F.Supp. 1000, 1004 (more than hour and one-half detention gives rise to constitutional claim); see also *Gramenos v. Jewel Companies, Inc.*, 797 F.2d 432, 437 (7th Cir. 1986) (four hour delay requires explanation for misdemeanant), cert. denied, 1075 Ct. [sic] 1952) (1987); cf. *Dommer v. Hatcher*, 427 F.Supp. at 1046 (twenty-four hour maximum; forty-eight hours if Sunday is included). (Judge Stewart dissenting in *Williams v. Ward*, 845 F.2d 374 (2nd Cir. 1988), the *one* case which allows 72 hours because of the special circumstances of Manhattan.)

III

INJUNCTIVE RELIEF IS PROPER

The equitable criteria for granting injunctive relief are: (1) strong likelihood of success on the merits; (2) the possibility of irreparable injury to plaintiffs if the injunction is not issued; (3) a balance of hardships favoring plaintiffs; and, (4) advancement of the public interest. *Los Angeles Memorial Coliseum Com'n. v. Nat. Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). *See*, e.g., *Richter v. Department of Alcoholic Beverage Control*, 559 F.2d 1168, 1173 (9th Cir. 1977); *Aguirre v. Chula Vista Sanitary Services*, 542 F.2d 229 (9th Cir. 1976).

Plaintiffs can meet this burden by showing either: (1) a combination of probable success on the merits and the possibility of irreparable injury, or (2) that serious issues are raised and the balance of hardships tip sharply in plaintiffs' favor. As the Ninth Circuit has explained, these "are not really two entirely separate tests . . . they are merely extremes of a single continuum:"

> The critical element in determining the test to be applied is the relative hardship to the parties. If the balance of harm tips decidedly toward the plaintiff, then the plaintiff need not show as robust a likelihood of success on the merits as when the balance tips less decidedly. *Aguirre v. Chula Vista Sanitary Service*, 542 F.2d 779 (9th Cir. 1976). No chance of success at all, however, will not suffice. The irreducible minimum has been described by one court as a fair chance of success on the merits. *McCormick v. Clayton*, 441, F.Supp. 662 (D. Oregon 1977), while another has said that the questions must be serious enough to require litigation, *Aguirre, supra*, . . . [W]e accept either [formulation] as satisfactory.

Benda v. Grand Lodge of the International Association of Machinists and Aerospace Workers, 584 F.2d 303, 315 (9th Cir. 1978), *cert. dismissed*, 441 U.S. 937 (1979). *Accord:*

Dollar Rent-a-car of Washington, Inc. v. Travelers Indemnity Company, 774 F.2d 1371, 1374-75 (9th Cir. 1985).

Preliminary relief has been granted in numerous jail and prison cases. See, e.g., *Miller v. Carson*, 401 F.Supp. 835 (M.D. Fla. 1975) (jail overcrowding conditions); *Vasquez v. Gray*, 523 F.Supp. 1379 (S.D. N.Y. 1981) (jail overcrowding); *Inmates of Attica C.F. v. Rockefeller*, 453, F.2d 12 (2nd Cir. 1971) (brutality after retaking of prison); *Lilies v. Ward*, 424 F.Supp. 678 (M.D. Pa. 1981) (retaliation by County for bringing jail and other institutional litigation).

A showing of violation of constitutional rights is sufficient to establish irreparable harm. *Elrod v. Burns*, 427 U.S. 347 (1976); *Deerfield Medical Center v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981); *Johnson v. Bergland*, 586 F.2d 993, 995 (4th Cir. 1978).

Where the court finds that the conditions affected by its preliminary injunction are of doubtful constitutionality, that plaintiffs would probably succeed on the merits, and that the balance of hardships tipped sharply in plaintiffs' favor, injunctive relief is appropriate. *Toussaint v. Yockey*, 722 F.2d 1490 at p. 1496 (9th Cir. 1984).

Plaintiffs demonstrate both a substantial likelihood that they will prevail on the merits of their Complaint and that the balance of hardships tip decidedly in favor of issuance of a preliminary injunction. Thus, both prongs of the Ninth Circuit's test require that a preliminary injunction be issued here.

IV

THE PRELIMINARY INJUNCTION

This action has been certified as a class action. Plaintiffs request a Preliminary Injunction which is identical in substance to the Orange County Order (Exhibit 1), vis:

1. The County of Riverside, by and through Cois Byrd, its Sheriff, shall initiate and implement the following policy:

> All persons arrested without a warrant and detained in the custody of the Riverside County Jails, County of Riverside, California, shall, within thirty six (36) hours of the time of the arrest, be taken before a Judge, Magistrate, Court Commissioner, or other authorized judicial officer, for a hearing on determination of probable cause for detention.

(See *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed. 54 (1975); *Bernard v. City of Palo Alto*, 699 F.2d 1023 (9th Cir. 1983).

2. The court will retain jurisdiction indefinitely to review the procedures adopted and implemented hereunder, with a view to their compliance in practice with the mandate of *Gerstein* and *Bernard*. This includes the implementation of satisfactory procedures in the Riverside County branch jails as soon as practicable.

3. The above policy shall be effective sixty (60) days after entry of this order.

DATED: March 2, 1989

/s/ Richard P Herman
RICHARD P. HERMAN
JAMES GLICK
PAUL W. COMISKEY
Attorneys for Plaintiffs

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BARRY SCOTT, et al., Plaintiffs, v. BRAD GATES, et al., Defendants.	)	No. CV 84-8647 RG(Kx) STIPULATED ORDER

(Filed Oct. 3, 1988)

This action was filed on November 8, 1984. While it has always been presented – at least in general terms – as having a class action perspective, formal request for certification of a class was not made until July 9, 1985.

The motion for certification has been formally briefed and argued, and substantial interim discovery on the issue has been conducted. In addition several informal conferences have been had among counsel and the court. All parties concerned are is substantial agreement on the question of a class action and the relief which should be afforded to that class.

Accordingly, it is ordered:

1. The parties agree that there is a certifiable class in this case, thus eliminating certification as a pending issue.

2. The class is composed of all persons arrested and [illegible] in the County of Orange, without an outstanding arrest warrant justifying the same, between December 5, 1981 and the date hereof.

3. The County of Orange, by and through Brad Gates, its Sheriff/Coroner, shall initiate and implement the following policy:

> All persons arrested without a warrant and detained in the custody of the Orange County Jail, Orange County, California, shall, within 36 hours of the time of arrest, be taken before a judge, magistrate, court commissioner, or other authorized judicial officer, for a hearing on determination of probable cause for detention.

(*See Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed. 54 (1975); *Bernard v. City of Palo Alto*, 699 F.2d 1023 (9th Cir. 1983).)

4. The court will retain jurisdiction indefinitely to review the procedures adopted and implemented hereunder, with a view to their compliance in practice with the mandate of *Gerstein* and *Bernard*.

5. The above policy shall be effective sixty (60) days after entry of this order.

This order has no effect whatever upon the claims of the individually named plaintiffs in this action other than as they are affected as members of the class.

/s/ Richard A Gadbois
RICHARD A. GADBOIS, JR.
United States District Judge

DATED: October 3, 1986.

EXHIBIT 2

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DONALD LEE McLAUGHLIN, et al.,	)	CASE NO. CV 87-5597 RG
Plaintiffs	)	PLAINTIFFS' SUPPLEMENTAL EXHIBITS RE: CLASS CERTIFICATION
vs.	)	
THE COUNTY OF RIVERSIDE, et al.,	)	
Defendants.	)	

I

EXHIBITS - WORST CASE "5-DAY" SCENARIO

Defendants have produced the charts and records attached hereto as EXHIBITS A, B and C indicating substantial non-compliance with *Gerstein v. Pugh*, 420 U.S

103, 43, L.Ed.2d 54 (1975). Plaintiffs selected three days, November 11, 12 and 13, 1987, for which a compilation of 108 arrests were provided. November 11th was a holiday and a Wednesday. November 12th was Thursday and November 13th was Friday. Plaintiffs expected a typical worst case weekend or holiday scenario, that is persons arrested on Wednesday would likely not be arraigned or released "no complaint" until the following Monday, November 16, 1987, *that is, five (5) days* in custody without seeing a magistrate or a judge. In fact, the records produced substantiate the worst case scenario (for Example, EXHIBIT A, arrests No. 2, 3, 7, 12, 13, etc.).

As in *Scott*, plaintiffs requested and received a compilation. One hundred eight arrests were tracked. There were many citation releases (P.C. 853.6 OR 853.9), OR and Bail releases, and Drunk releases when sober (P.C. 849(b)2). In part, this was due to a seriously overcrowded jail, where there were 25% more male inmates than beds (EXHIBIT C). The list of arrestees (EXHIBIT B) when compared with the release lists raise the interesting question of why so many cite and releases were issued at the jail, rather than in the field.

Removed from the sample were those quickly released, Marshalls' arrests which were likely on warrants, and two or three apparently prompt arraignments which were likely arrests on warrants, or for parole or probation violations or otherwise aberrant.

II.

WARRANTLESS ARESTEES HELD IN CUSTODY

This leaves a rough sample of 28 warrantless arrestees (Nos. 2, 3, 6, 7, 12, 13, 15, 18 21, 26, 34, 36, 38, 40, 42, 46, 49, 56, 59, 60, 64, 67, 68, 73, 75, 78, 79, 88, 92, 105) arrested over a period of three days and not promptly released. Of the total warrantless arrestee sample, 42% *were released "no complaint" after four to six days in custody.*

Of warrantless arrestees eventually seen by a Judge (16):

6% were seen by a Judge in 3 days

56% were seen by a Judge in 4 days

37% were seen by a Judge in 5 days

Thus *every* "normal" warrantless arrestee was held in custody in violation of *Gerstein*. Assuming 10,000 arrests a year (108 in three days), 2,800 persons a year are held in the Riverside County Jail in violation of *Gerstein*.
DATED: January 22, 1988

/s/ Richard P Herman
RICHARD P. HERMAN
JAMES GLICK
PAUL W. COMISKEY
Attorneys for Plaintiff

EXHIBIT A

BOOKING NUMBER: H23983

ARREST DATE TIME: 11/11/87 0010 hours

CHARGES ARRESTING AGENCY: 23142a/b VC Riverside Police

JAIL BOOKING DATE TIME: 11/11/87 0100 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: Cited

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/11/87 0600 hrs

BOOKING NUMBER: H23997

ARREST DATE TIME: 11/11/87 0130

CHARGES ARRESTING AGENCY: 220 PC Corona Police

JAIL BOOKING DATE TIME: 11/11/87 1200 hours

TO COURTHOUSE NOT SEEN BY JUDGE: 11/12/87 11/13/87 11/16/87

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 825 PC

ACTUALLY RELEASED DATE TIME: 11/17/87 0615 hrs

BOOKING NUMBER: H23991

ARREST DATE TIME: 11/11/87 0140

CHARGES ARRESTING AGENCY: 459 PC Riverside Police

JAIL BOOKING DATE TIME: 11/11/87 0530

TO COURTHOUSE NOT SEEN BY JUDGE: Not taken Re: no complaint at court

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 825 PC

ACTUALLY RELEASED DATE TIME: 11/16/87 2005 hrs

BOOKING NUMBER: H23989

ARREST DATE TIME: 11/11/87 0410

CHARGES ARRESTING AGENCY: 647f PC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/11/87 0510

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 849(b)2 PC

ACTUALLY RELEASED DATE TIME: 11/11/87 0905 hrs

BOOKING NUMBER: H23990

ARREST DATE TIME: 11/11/87 0410

CHARGES ARRESTING AGENCY: 647f PC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/11/87 0515

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 849(b)2 PC

ACTUALLY RELEASED DATE TIME: 11/11/87 0915 hrs

BOOKING NUMBER: H23995

ARREST DATE TIME: 11/11/87 0820

CHARGES ARRESTING AGENCY: 10851 VC, 245a PC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/11/87 0940 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: Bail bond

ACTUALLY RELEASED DATE TIME: 11/14/87 0125 hrs

BOOKING NUMBER: H23996

ARREST DATE TIME: 11/11/87 1135 hours

CHARGES ARRESTING AGENCY: 247(b) PC Moren Valley Police

JAIL BOOKING DATE TIME: 11/11/87 1250 hours

TO COURTHOUSE NOT SEEN BY JUDGE: Not taken Re: No complaint at court

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 825 PC

ACTUALLY RELEASED DATE TIME: 11/16/87 2215 hrs

BOOKING NUMBER: H24000

ARREST DATE TIME: 11/11/87 1200 hours

CHARGES ARRESTING AGENCY: 23152a/b VC Riverside Police

JAIL BOOKING DATE TIME: 11/11/87 1245 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/11/87 1730 hrs

BOOKING NUMBER: H24003

ARREST DATE TIME: 11/11/87 1350 hours

CHARGES ARRESTING AGENCY: 490.5 PC Riverside Police

JAIL BOOKING DATE TIME: 11/11/87 1430 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/11/87 1825 hrs

BOOKING NUMBER: H024002

ARREST DATE TIME: 11/11/87 1415 hours

CHARGES ARRESTING AGENCY: 647f PC Moreno Valley Police

JAIL BOOKING DATE TIME: 11/11/87 1500 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: Cited

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/11/87 1845 hrs

BOOKING NUMBER: H24006

ARREST DATE TIME: 11/11/87 1505 hours

CHARGES ARRESTING AGENCY: 23152 a/b VC CHP

JAIL BOOKING DATE TIME: 11/11/87 1620 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/11/87 2020 hrs

BOOKING NUMBER: H24007

ARREST DATE TIME: 11/11/87 1600 hours

CHARGES ARRESTING AGENCY: 459 PC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/11/87 1630 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/16/87

RELEASE AUTHORITY: Bail bond

ACTUALLY RELEASED DATE TIME: 11/17/87 1610 hrs

BOOKING NUMBER: H24011

ARREST DATE TIME: 11/11/87 1815 hours

CHARGES ARRESTING AGENCY: 245(a)PC, 594 PC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/11/87 1830 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/16/87

RELEASE AUTHORITY: OR

ACTUALLY RELEASED DATE TIME: 11/16/87 2020 hrs

BOOKING NUMBER: H24013

ARREST DATE TIME: 11/11/87 1730 hours

CHARGES ARRESTING AGENCY: 23152a/b VC CHP

JAIL BOOKING DATE TIME: 11/11/87 1905 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/11/87 2350 hrs

BOOKING NUMBER: H24015

ARREST DATE TIME: 11/11/87 1620 hours

CHARGES ARRESTING AGENCY: 273.5 PC Perris Police

JAIL BOOKING DATE TIME: 11/11/87 2015 hours

TO COURTHOUSE NOT SEEN BY JUDGE: 11/12/87

FIRST COURT APPEARANCE: 11/13/87

RELEASE AUTHORITY: OR

ACTUALLY RELEASED DATE TIME: 11/13/87 1248 hrs

BOOKING NUMBER: H24021

ARREST DATE TIME: 11/11/87 2200

CHARGES ARRESTING AGENCY: 23152a/b VC, 14601 VC Moreno Valley Police

JAIL BOOKING DATE TIME: 11/11/87 2245 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: Bail

ACTUALLY RELEASED DATE TIME: 11/12/87 0340 hrs

BOOKING NUMBER: H24023

ARREST DATE TIME: 11/11/87 2200 hours

CHARGES ARRESTING AGENCY: 242 PC Moreno Valley Police

JAIL BOOKING DATE TIME: 11/11/87 2320 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/12/87 0220 hrs

BOOKING NUMBER: H24024

ARREST DATE TIME: 11/11/87 2300

CHARGES ARRESTING AGENCY: 23152a/b VC, 23103 VC Riverside Police

JAIL BOOKING DATE TIME: 11/11/87 2338

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/12/87 0515 hrs

BOOKING NUMBER: H23836

ARREST DATE TIME: 11/11/87 1710 hours

CHARGES ARRESTING AGENCY: 490.5 PC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/11/87 1900 hours

TO COURTHOUSE NOT SEEN BY JUDGE: Not taken No complaint at court

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 825 PC

ACTUALLY RELEASED DATE TIME: 11/16/87 2150 hrs

BOOKING NUMBER: H24027

ARREST DATE TIME: 11/12/87 0040 hours

CHARGES ARRESTING AGENCY: 23152a/b VC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/12/87 0142 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/12/87 0515 hrs

BOOKING NUMBER: H24109

ARREST DATE TIME: 11/12/87 0200 hours

CHARGES ARRESTING AGENCY: 11377 H&S Hemet Police

JAIL BOOKING DATE TIME: 11/12/87 1555 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/16/87

RELEASE AUTHORITY: Still in court

ACTUALLY RELEASED DATE TIME: n/a

BOOKING NUMBER: H24032

ARREST DATE TIME: 11/12/87 0145 hours

CHARGES ARRESTING AGENCY: 23152a/b CHP

JAIL BOOKING DATE TIME: 11/12/87 0305

TO COURTHOUSE NOT SEEN BY JUDGE: 11/13/87

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: Bail

ACTUALLY RELEASED DATE TIME: 11/14/87 1530 hrs

BOOKING NUMBER: H24038

ARREST DATE TIME: 11/12/87 0215 hours

CHARGES ARRESTING AGENCY: 1150 H&S 23152 a/b VC 11377 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/12/87 0415 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: OR

ACTUALLY RELEASED DATE TIME: 11/12/87 1655 hrs

BOOKING NUMBER: H24041

ARREST DATE TIME: 11/12/87 0231 hours

CHARGES ARRESTING AGENCY: 10851 VC 183 PC 496 PC Riverside Police

JAIL BOOKING DATE TIME: 11/12/87 0728 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: OR

ACTUALLY RELEASED DATE TIME: 11/12/87 1215 hrs

BOOKING NUMBER: H24033

ARREST DATE TIME: 11/12/87 0250 hours

CHARGES ARRESTING AGENCY: 11377 H&S Moreno Valley Police

JAIL BOOKING DATE TIME: 11/12/87 0340 hours

TO COURTHOUSE NOT SEEN BY JUDGE: Hospital from 11/13/87 to 12/01/87

FIRST COURT APPEARANCE: 12/02/87

RELEASE AUTHORITY: Court release

ACTUALLY RELEASED DATE TIME: 12/02/87 1710 hrs

BOOKING NUMBER: H24039

ARREST DATE TIME: 11/12/87 0340 hours

CHARGES ARRESTING AGENCY: 23152a/b VC Moreno Valley Police

JAIL BOOKING DATE TIME: 11/12/87 0530 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/12/87 0955 hrs

BOOKING NUMBER: H24040

ARREST DATE TIME: 11/12/87 0420 hours

CHARGES ARRESTING AGENCY: 10851 VC 496PC Riverside Police

JAIL BOOKING DATE TIME: 11/12/87 0630 hours

TO COURTHOUSE NOT SEEN BY JUDGE: Not taken No Complaint at court

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 825 PC

ACTUALLY RELEASED DATE TIME: 11/16/87 2010 hrs

BOOKING NUMBER: H24046

ARREST DATE TIME: 11/12/87 0910 hours

CHARGES ARRESTING AGENCY: 23152a/b VC Riverside Police

JAIL BOOKING DATE TIME: 11/12/87 1030 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/12/87 1550 hrs

BOOKING NUMBER: H24059

ARREST DATE TIME: 11/12/87 0930 hours

CHARGES ARRESTING AGENCY: 148 PC Marshal

JAIL BOOKING DATE TIME: 11/12/87 1240 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/12/87 Court commitment

RELEASE AUTHORITY: Fine paid

ACTUALLY RELEASED DATE TIME: 11/13/87 0215 hrs

BOOKING NUMBER: H24050

ARREST DATE TIME: 11/12/87 1010 hours

CHARGES ARRESTING AGENCY: 4532 PC Marshal

JAIL BOOKING DATE TIME: 11/12/87 1110 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/12/87

RELEASE AUTHORITY: Bail bond

ACTUALLY RELEASED DATE TIME: 11/12/87 1845 hrs

BOOKING NUMBER: H24057

ARREST DATE TIME: 11/12/87 1200 hours

CHARGES ARRESTING AGENCY: 484 PC Marshal

JAIL BOOKING DATE TIME: 11/12/87 1200 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/12/87 Court commitment

RELEASE AUTHORITY: Book/release

ACTUALLY RELEASED DATE TIME: 11/12/87 1335 hrs

BOOKING NUMBER: H24060

ARREST DATE TIME: 11/12/87 1200 hours

CHARGES ARRESTING AGENCY: 23152a Marshal

JAIL BOOKING DATE TIME: 11/12/87 1240 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/12/87 Court commitment

RELEASE AUTHORITY: Time served

ACTUALLY RELEASED DATE TIME: 11/23/87 0045 hrs

BOOKING NUMBER: H24054

ARREST DATE TIME: 11/12/87 1205 hours

CHARGES ARRESTING AGENCY: 484 PC 488 PC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/12/87 1205 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/12/87 Court commitment

RELEASE AUTHORITY: Book/release

ACTUALLY RELEASED DATE TIME: 11/12/87 1300 hrs

BOOKING NUMBER: H24105

ARREST DATE TIME: 11/11/87 1205 hours

CHARGES ARRESTING AGENCY: 11351 H&S 496 PC Riverside Police

JAIL BOOKING DATE TIME: 11/12/87 1520 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/16/87

RELEASE AUTHORITY: Court order

ACTUALLY RELEASED DATE TIME: 12/14/87 1445 hrs

BOOKING NUMBER: H23839

ARREST DATE TIME: 11/12/87 1210 hours

CHARGES ARRESTING AGENCY: 490.5 PC Riverside Sheriff Transportation

JAIL BOOKING DATE TIME: 11/12/87 1215 hours

TO COURTHOUSE NOT SEEN BY JUDGE: Remand

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: Book/release Court order

ACTUALLY RELEASED DATE TIME: 11/12/87 1321 hrs

BOOKING NUMBER: H24403

ARREST DATE TIME: 11/12/87 1240 hours

CHARGES ARRESTING AGENCY: 11351 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/12/87 1500 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/16/87

RELEASE AUTHORITY: Court release

ACTUALLY RELEASED DATE TIME: 12/02/87 1455 hrs

BOOKING NUMBER: H23848

ARREST DATE TIME: 11/12/87 1530 hours

CHARGES ARRESTING AGENCY: 490.5 PC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/12/87 1625 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/13/87

RELEASE AUTHORITY: Time served

ACTUALLY RELEASED DATE TIME: 11/13/87 1635 hrs

BOOKING NUMBER: H24115

ARREST DATE TIME: 11/12/87 1530 hours

CHARGES ARRESTING AGENCY: 23152a VC Perris Police

JAIL BOOKING DATE TIME: 11/13/87 1130 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/16/87

RELEASE AUTHORITY: Still in custody

ACTUALLY RELEASED DATE TIME: n/a

BOOKING NUMBER: H23843

ARREST DATE TIME: 11/12/87 1600 hours

CHARGES ARRESTING AGENCY: 23152a VC 11550 H&S Corona Police

JAIL BOOKING DATE TIME: 11/12/87 1856 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.6 PC

ACTUALLY RELEASED DATE TIME: 11/12/87 2335 hrs.

BOOKING NUMBER: H24165

ARREST DATE TIME: 11/12/87 1600 hours

CHARGES ARRESTING AGENCY: 496 PC Riverside Police

JAIL BOOKING DATE TIME: 11/12/87 1720 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/16/87

RELEASE AUTHORITY: Time served

ACTUALLY RELEASED DATE TIME: 12/11/87 0700 hrs

BOOKING NUMBER: H24052

ARREST DATE TIME: 11/12/87 1130 hours

CHARGES ARRESTING AGENCY: 11378.5 H&S Riverside Sheriff

JAIL BOOKING DATE TIME: 11/12/87 1130 hours

TO COURTHOUSE NOT SEEN BY JUDGE: 11/12/87

FIRST COURT APPEARANCE: 11/12/87

RELEASE AUTHORITY: Court Commitment Still in custody

ACTUALLY RELEASED DATE TIME: n/a

BOOKING NUMBER: H24102

ARREST DATE TIME: 11/12/87 1240 hours

CHARGES ARRESTING AGENCY: 11351 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/12/87 1500 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/16/87

RELEASE AUTHORITY: Still in custody

ACTUALLY RELEASED DATE TIME: n/a

BOOKING NUMBER: H24164

ARREST DATE TIME: 11/12/87 1630 hours

CHARGES ARRESTING AGENCY: 11350 Riverside Police

JAIL BOOKING DATE TIME: 11/12/87 1830 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/13/87

RELEASE AUTHORITY: Still in custody

ACTUALLY RELEASED DATE TIME: n/a

BOOKING NUMBER: H24160

ARREST DATE TIME: 11/12/87 1830 hours

CHARGES ARRESTING AGENCY: 23152a/b VC Riverside Police

JAIL BOOKING DATE TIME: 11/12/87 2020 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 0045 hrs

BOOKING NUMBER: H24152

ARREST DATE TIME: 11/12/87 1900 hours

CHARGES ARRESTING AGENCY: 273.5 PC 254(s) PC Moreno Valley Police

JAIL BOOKING DATE TIME: 11/12/87 2210 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: Bail bond

ACTUALLY RELEASED DATE TIME: 11/13/87 2055 hrs

BOOKING NUMBER: H24157

ARREST DATE TIME: 11/12/87 2005 hours

CHARGES ARRESTING AGENCY: 12020 PC University of California, Riverside Police

JAIL BOOKING DATE TIME: 11/12/87 2050 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: OR

ACTUALLY RELEASED DATE TIME: 11/13/87 0045 hrs

BOOKING NUMBER: H2415 [illegible digit]

ARREST DATE TIME: 11/12/87 2020 hours

CHARGES ARRESTING AGENCY: 647f PC 12020A PC Moreno Valley Police

JAIL BOOKING DATE TIME: 11/12/87 2105 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 825 PC

ACTUALLY RELEASED DATE TIME: 11/17/87 2030 hrs

BOOKING NUMBER: H24155

ARREST DATE TIME: 11/12/87 2030 hours

CHARGES ARRESTING AGENCY: 4573 PC 4230 B&P Riverside Sheriff

JAIL BOOKING DATE TIME: 11/12/87 2130 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: Bail Bond

ACTUALLY RELEASED DATE TIME: 11/13/87 0530 hrs

BOOKING NUMBER: H24145

ARREST DATE TIME: 11/12/87 2050 hours

CHARGES ARRESTING AGENCY: 11379.6 H&S 496 PC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/12/87 2340 hours

TO COURTHOUSE NOT SEEN BY JUDGE: 11/13/87 11/16/87 11/17/87

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 825 PC

ACTUALLY RELEASED DATE TIME: 11/17/87 2030 hrs

BOOKING NUMBER: H24151

ARREST DATE TIME: 11/12/87 2051 hours

CHARGES ARRESTING AGENCY: 23152a/b VC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/12/87 2235 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 0300 hrs

BOOKING NUMBER: H24154

ARREST DATE TIME: 11/12/87 2120 hours

CHARGES ARRESTING AGENCY: 647f PC Riverside Police

JAIL BOOKING DATE TIME: 11/12/87 2145 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 0200 hrs

BOOKING NUMBER: H24153

ARREST DATE TIME: 11/12/87 2140 hours

CHARGES ARRESTING AGENCY: 647f PC Moreno Valley Police

JAIL BOOKING DATE TIME: 11/12/87 2200 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 849B(2)

ACTUALLY RELEASED DATE TIME: 11/13/87 0210 hrs

BOOKING NUMBER: H24144

ARREST DATE TIME: 11/12/87 2150 hours

CHARGES ARRESTING AGENCY: 23152a/b VC 148 PC CHP

JAIL BOOKING DATE TIME: 11/12/87 2345 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 0700 hrs

BOOKING NUMBER: H24147

ARREST DATE TIME: 11/12/87 2215 hours

CHARGES ARRESTING AGENCY: 23152a/b VC Riverside Police

JAIL BOOKING DATE TIME: 11/12/87 2330 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 0430 hrs

BOOKING NUMBER: H24149

ARREST DATE TIME: 11/12/87 2240 hours

CHARGES ARRESTING AGENCY: 647 PC Riverside Police

JAIL BOOKING DATE TIME: 11/12/87 2307 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 0430 hrs

BOOKING NUMBER: H24847

ARREST DATE TIME: 11/12/87 2315

CHARGES ARRESTING AGENCY: 11378 H&S 11377 H&S 11550 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 0215 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/17/87

RELEASE AUTHORITY: Still in custody

ACTUALLY RELEASED DATE TIME: n/a

BOOKING NUMBER: H23844

ARREST DATE TIME: 11/12/87 2330 hours

CHARGES ARRESTING AGENCY: 647f PC

JAIL BOOKING DATE TIME: 11/12/87 2355 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 0400 hrs

BOOKING NUMBER: H24048

ARREST DATE TIME: 11/12/87 1100 hours

CHARGES ARRESTING AGENCY: 490.5 PC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/12/87 1100 hours

TO COURTHOUSE NOT SEEN BY JUDGE: Court remand

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: Book/release

ACTUALLY RELEASED DATE TIME: 11/12/87 1250 hrs

BOOKING NUMBER: H24141

ARREST DATE TIME: 11/12/87 2050 hours

CHARGES ARRESTING AGENCY: 11379.6 H&S 496 PC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/13/87 0200 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 825 PC

ACTUALLY RELEASED DATE TIME: 11/17/87 2030 hrs

BOOKING NUMBER: H24139

ARREST DATE TIME: 11/12/87 2310 hours

CHARGES ARRESTING AGENCY: 11379 H&S 11378 H&S 11550 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 0225 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 825 PC

ACTUALLY RELEASED DATE TIME: 11/16/87 2208 hrs

BOOKING NUMBER: H24130

ARREST DATE TIME: 11/13/87 0415 hours

CHARGES ARRESTING AGENCY: 23152a/b VC CHP

JAIL BOOKING DATE TIME: 11/13/87 0510 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 0845 hrs

BOOKING NUMBER: H24134

ARREST DATE TIME: 11/13/87 0420 hours

CHARGES ARRESTING AGENCY: 242 PC Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 0440 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: Bail

ACTUALLY RELEASED DATE TIME: 11/13/87 0910 hrs

BOOKING NUMBER: H24096

ARREST DATE TIME: 11/13/87 1004 hours

CHARGES ARRESTING AGENCY: 11351 H&S 11550 H&S 11364 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1450 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/16/87

RELEASE AUTHORITY: OR

ACTUALLY RELEASED DATE TIME: 12/15/87 1830 hrs

BOOKING NUMBER: H24224

ARREST DATE TIME: 11/13/87 1011 hours

CHARGES ARRESTING AGENCY: 11352 H&S 11550 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1355 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: Court OR

ACTUALLY RELEASED DATE TIME: 12/01/87 1530 hrs

BOOKING NUMBER: H24114

ARREST DATE TIME: 11/13/87 1020 hours

CHARGES ARRESTING AGENCY: 11377 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1245 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/17/87

RELEASE AUTHORITY: Still in custody

ACTUALLY RELEASED DATE TIME: n/a

BOOKING NUMBER: H24417

ARREST DATE TIME: 11/13/87 1010 hours

CHARGES ARRESTING AGENCY: 246 PC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/13/87 1040 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/13/87

RELEASE AUTHORITY: Work release program

ACTUALLY RELEASED DATE TIME: 12/24/87 1600 hrs

BOOKING NUMBER: H24222

ARREST DATE TIME: 11/13/87 1016 hours

CHARGES ARRESTING AGENCY: 11351 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1410 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: Bond

ACTUALLY RELEASED DATE TIME: 11/15/87 1500 hrs

BOOKING NUMBER: H24223

ARREST DATE TIME: 11/13/87 1016 hours

CHARGES ARRESTING AGENCY: 11351 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1410 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/17/87

RELEASE AUTHORITY: Court release

ACTUALLY RELEASED DATE TIME: 12/01/87 1715 hrs

BOOKING NUMBER: H24225

ARREST DATE TIME: 11/13/87 1016 hours

CHARGES ARRESTING AGENCY: 11351 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1400 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/17/87

RELEASE AUTHORITY: Court release

ACTUALLY RELEASED DATE TIME: 12/01/87 1525 hrs

BOOKING NUMBER: H24099

ARREST DATE TIME: 11/13/87 1020 hours

CHARGES ARRESTING AGENCY: 11377 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1245 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: OR

ACTUALLY RELEASED DATE TIME: 11/13/87 2333 hrs

BOOKING NUMBER: H24227

ARREST DATE TIME: 11/13/87 1030 hours

CHARGES ARRESTING AGENCY: 11550 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1355 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 1820 hrs

BOOKING NUMBER: H23848

ARREST DATE TIME: 11/13/87 1115 hours

CHARGES ARRESTING AGENCY: 490.5 PC Marshal

JAIL BOOKING DATE TIME: 11/13/87 1150 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: Court commitment

RELEASE AUTHORITY: Time served

ACTUALLY RELEASED DATE TIME: 11/16/87 0655 hrs

BOOKING NUMBER: H24098

ARREST DATE TIME: 11/13/87 1149 hours

CHARGES ARRESTING AGENCY: 490.5 PC Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1320 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 1817 hrs

BOOKING NUMBER: H24100

ARREST DATE TIME: 11/13/87 1149 hours

CHARGES ARRESTING AGENCY: 490.5 PC Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1320 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 1820 hrs

BOOKING NUMBER: H24219

ARREST DATE TIME: 11/13/87 1150 hours

CHARGES ARRESTING AGENCY: 459 PC CHP

JAIL BOOKING DATE TIME: 11/13/87 1545 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: OR

ACTUALLY RELEASED DATE TIME: 11/14/87 0050 hrs

BOOKING NUMBER: H24226

ARREST DATE TIME: 11/13/87 1200 hours

CHARGES ARRESTING AGENCY: 11550 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1400 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 1820 hrs

BOOKING NUMBER: H24111

ARREST DATE TIME: 11/13/87 1200 hours

CHARGES ARRESTING AGENCY: 11550 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1350 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 1840 hrs

BOOKING NUMBER: H24094

ARREST DATE TIME: 11/13/87 1330 hours

CHARGES ARRESTING AGENCY: 11351 H&S 11550 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1535 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/17/87

RELEASE AUTHORITY: Court release

ACTUALLY RELEASED DATE TIME: 12/01/87 1845 hrs

BOOKING NUMBER: H24218

ARREST DATE TIME: 11/13/87 1400 hours

CHARGES ARRESTING AGENCY: 23152 VC Marshal

JAIL BOOKING DATE TIME: 11/13/87 1500 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/13/87 Court commitment

RELEASE AUTHORITY: Still in custody

ACTUALLY RELEASED DATE TIME: n/a

BOOKING NUMBER: H24095

ARREST DATE TIME: 11/13/87 1400 hours

CHARGES ARRESTING AGENCY: 470 PC Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1515 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: OR

ACTUALLY RELEASED DATE TIME: 11/14/87 0230 hrs

BOOKING NUMBER: H24093

ARREST DATE TIME: 11/13/87 1415 hours

CHARGES ARRESTING AGENCY: 490.5 Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1615 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 2100 hrs

BOOKING NUMBER: H24221

ARREST DATE TIME: 11/13/87 1450 hours

CHARGES ARRESTING AGENCY: 11351 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1540 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/17/87

RELEASE AUTHORITY: OR

ACTUALLY RELEASED DATE TIME: 12/01/87 1810 hrs

BOOKING NUMBER: H24216

ARREST DATE TIME: 11/13/87 1500 hours

CHARGES ARRESTING AGENCY: 496 PC Moreno Valley Police

JAIL BOOKING DATE TIME: 11/13/87 1617 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: Bail

ACTUALLY RELEASED DATE TIME: 11/14/87 0115 hrs

BOOKING NUMBER: H24217

ARREST DATE TIME: 11/13/87 1500 hours

CHARGES ARRESTING AGENCY: 496 PC Moreno Valley Police

JAIL BOOKING DATE TIME: 11/13/87 1617 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: Bail

ACTUALLY RELEASED DATE TIME: 11/14/87 0107 hrs

BOOKING NUMBER: H24092

ARREST DATE TIME: 11/13/87 1530 hours

CHARGES ARRESTING AGENCY: 10851 VC 496 PC Riverside Sheriff

JAIL BOOKING DATE TIME: 11/13/87 1716 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: OR

ACTUALLY RELEASED DATE TIME: 11/14/87 0230 hrs

BOOKING NUMBER: H24213

ARREST DATE TIME: 11/13/87 1540 hours

CHARGES ARRESTING AGENCY: 490.5 PC Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 1728 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 1945 hrs

BOOKING NUMBER: H24212

ARREST DATE TIME: 11/13/87 1545 hours

CHARGES ARRESTING AGENCY: 23152a/b VC CHP

JAIL BOOKING DATE TIME: 11/13/87 1740 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: Bond

ACTUALLY RELEASED DATE TIME: 11/14/87 1300 hrs

BOOKING NUMBER: H24208

ARREST DATE TIME: 11/13/87 1640 hours

CHARGES ARRESTING AGENCY: 2800.1 VC Moreno Valley Police

JAIL BOOKING DATE TIME: 11/13/87 1802 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 1900 hrs

BOOKING NUMBER: H24206

ARREST DATE TIME: 11/13/87 1655 hours

CHARGES ARRESTING AGENCY: 23152a/b VC CHP

JAIL BOOKING DATE TIME: 11/13/87 1816 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 2310 hrs

BOOKING NUMBER: H24207

ARREST DATE TIME: 11/13/87 1700 hours

CHARGES ARRESTING AGENCY: 20000 VC 148 PC CHP

JAIL BOOKING DATE TIME: 11/13/87 2044 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/13/87 2355 hrs

BOOKING NUMBER: H24200

ARREST DATE TIME: 11/13/87 1815 hours

CHARGES ARRESTING AGENCY: 23153a/b VC CHP

JAIL BOOKING DATE TIME: 11/13/87 2030 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: OR

ACTUALLY RELEASED DATE TIME: 11/14/87 0230 hrs

BOOKING NUMBER: H24199

ARREST DATE TIME: 11/13/87 1915 hours

CHARGES ARRESTING AGENCY: 23152a/b VC CHP

JAIL BOOKING DATE TIME: 11/13/87 2040 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/14/87 0040 hrs

BOOKING NUMBER: H24201

ARREST DATE TIME: 11/13/87 1940 hours

CHARGES ARRESTING AGENCY: 647f PC Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 2030 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/14/87 0040 hrs

BOOKING NUMBER: H24196

ARREST DATE TIME: 11/13/87 1940 hours

CHARGES ARRESTING AGENCY: 23152a/b VC Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 2050 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/14/87 0045 hrs

BOOKING NUMBER: H24193

ARREST DATE TIME: 11/13/87 2030 hours

CHARGES ARRESTING AGENCY: 11377a H&S 11550 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 2120 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE: 11/18/87

RELEASE AUTHORITY: Court release

ACTUALLY RELEASED DATE TIME: 12/03/87 1655 hrs

BOOKING NUMBER: H24190

ARREST DATE TIME: 11/13/87 2120 hours

CHARGES ARRESTING AGENCY: 647 G Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 2205 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: 853.9 PC

ACTUALLY RELEASED DATE TIME: 11/14/87 0215 hrs

BOOKING NUMBER: H24189

ARREST DATE TIME: 11/13/87 2120 hours

CHARGES ARRESTING AGENCY: 12020a PC Moreno Valley Police

JAIL BOOKING DATE TIME: 11/13/87 2220 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: OR

ACTUALLY RELEASED DATE TIME: 11/14/87 1245 hrs

BOOKING NUMBER: H24186

ARREST DATE TIME: 11/13/87 2205 hours

CHARGES ARRESTING AGENCY: 11377 H&S 11550 H&S Riverside Police

JAIL BOOKING DATE TIME: 11/13/87 2310 hours

TO COURTHOUSE NOT SEEN BY JUDGE:

FIRST COURT APPEARANCE:

RELEASE AUTHORITY: Bail bond

ACTUALLY RELEASED DATE TIME: 11/14/87 2015 hrs

Exhibit B

Daily Report of Jail Admissions
FOR 11/11/87

JAIL LOCATION RIVERSIDE JAIL

NAME	BOOKING NUMBER	CHARGE	ARREST AGENCY	DATE OF BIRTH
GEORGE,DANIEL,GILBERT	H004002	647	RSO	02/05/29
BATEMAN,LAURA,GAYE	H023834	40508A	RSO	10/12/63
BRACAMONTE,MARIA,OLIVIA	H023835	FTA	CPRD	10/26/53
BURTON,BEVERLY	H023836	490.5	RSD	11/01/62
LOPEZ,RAMON,ANTHONY	H023982	11550H	RPD	10/03/62
REED,WILLIAM,EDGAR	H023983	23152A	RPD	10/26/46
DICKERSON,WESLEY,DEWAIN,JR	H023984	23152A	CHP	08/12/60
BROWN,RICHARD,ELDON	H023986	490.5	RSO	09/28/54
BAGLEY,MICHAEL,EDWARD	H023987	40508A	RSO	01/28/67
DELAHERRAN,CLEOFAS,JR	H023988	40508A	UCRPD	12/02/67
HARRIS,REGGIE,WILLIAM	H023989	647F P	RSO	11/01/64
GLACIER,GLEN,JAMES	H023990	647F P	RSO	12/09/66
NGUYEN,THANH,TRUNG	H023991	459 PC	RPD	11/23/67
LOPEZ,SAUL,MOSIES	H023992	VOP	HPD	05/09/66
CRUSE,VINCENT,WARREN	H023993	853.7	SLOPD	07/21/65

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NAME	BOOKING NUMBER	CHARGE	ARREST AGENCY	DATE OF BIRTH
GAINES,KENDRIRK,ANDRE	H023994	14061.	CRPD	02/28/63
HENRY,DARRELL,SCOTT	H023995	10851V	RSO	07/16/58
MARTINEZ,RUMALDO,RODRIGUEZ	H023996	1203.2	RSO	02/02/60
MATTHEWS,EARL,WAYNE	H023997	220PC	CPD	11/16/32
MOORE,PERRY,RAYMOND	H023998	247PC	RSO	11/30/58
MASSIE,JERRY	H023999	470PC	RPD	10/13/67
RUDTIGER,JOSEPH	H024000	23152	RSO	05/16/52
BOLD,RICK,ERIC	H024001	40508A	RSO	01/27/65
ANKENBAUER,MARIS,GEARED	H024003	490.5	RPD	11/06/62
HARMISON,ANTHONY,DWAYNE	H024004	40508V	RSP	12/28/63
KRUEGER,KENNETH,JOHN	H024005	853.7	RSD	02/01/52
COLIN,JOSE,MANUEL	H024006	23152	CHP	09/23/69
KELLY,RAMON	H024007	459	RSO	12/19/67
LAGIGNE,ANTHONY,JON	H024008	40508M	RPD	10/25/66
RODRIGUEZ,MARIO,RENE	H024009	11350	RSO	10/18/68
IPLIN,NEIL,ALLAN	H024010	14601.	RSO	09/23/61
MAU,DAVID	H024011	245A P	RSO	10/07/66
OSBORE,SHAWN,ANDREW	H024012	40508A	RPD	
JOHNSON,GERALD,LEE	H024013	647 PC	MVPD	01/31/33
PETERSEN,JOHN	H024014	23152A	CHP	08/19/27
SUTPHIN,CHRISTOPHER,ALLAN	H024015	273.5	PRD	09/12/60

65

NAME	BOOKING NUMBER	CHARGE	ARREST AGENCY	DATE OF BIRTH
SMITH,DAVID,ANTHONY	H024016	484/85	PRD	04/22/69
LEE,DARRYL,RENAY	H024017	40508A	PPD	02/11/60
SNYDER,BILL,JOE	H024018	40508A	MVPD	11/07/55
DUCKWORTH,JOHNNY,LEE,JR	H024019	11350	RSO	08/16/63
HAYWOOD,HUGH,ALONZO	H024021	23152	RSO	06/16/55
[ILLEGIBLE],EUGENE,KENNETH	H024023	242 PC	MVPD	12/29/63
JOHNSON,GREGORY,LYNN	H024024	23152A	RPD	02/18/58
NEAL,SCOTT,LASALE	H024025	40508A	MVPD	12/30/66
TOTAL DEFENDANTS: 44				
MCPHEE,CRYSTAL,RACHAEL	H023837	666 PC	RPD	01/25/61
YATES,DARLA,GAY	H023838	11352	RPD	08/30/64
CLARK,CATHARINE,LEIGH	H023839	490.5	RSO	06/20/63
RINCON,GUADALUPE	H023840	490.5	RPD	02/08/60
ORTEGA,GLORIA,JEAN	H023841	B/W	RSO	07/08/53
CROSS,MARGUERITE,ADALE	H023842	1320	RPD	05/29/62
WASHBURN,ELLEN,KAY	H023843	11550	CPD	08/14/61
DUNCAN,BARBARA,JOAN,JR	H023844	647F P	RPD	09/25/64
[ILLEGIBLE],VIRGIL,LEROY	H024026	VOP B/	RPD	01/26/40
ASAVASANTI,SOMPHONG	H024027	23152A	RSO	04/04/51
HARRELL,ROBERT,EDWARD	H024028	40508A	UCR	06/22/60

NAME	BOOKING NUMBER	CHARGE	ARREST AGENCY	DATE OF BIRTH
BOYLAN,THOMAS,PAUL	H024029	11377A	RPD	04/15/61
WOODS,BRYCE,EUGENE	H024030	40508A	RSO	06/24/60
FRANCO,ROBERT	H024031	VOP 23	MVPD	03/27/55
ERWIN,STEVEN,GAIL	H024032	23152A	CHP	04/09/58
TENEYCK,DAVID,EARL	H024033	11377	MVPD	08/18/66
PADILLA,FERMIN	H024034	VOP B/	CPD	02/13/53
MEDINA,FELICIANO,ROJAS	H024035	40508A	CPD	06/09/62
GATLIN,ERIK,LEE	H024036	40508A	CPD	09/09/68
THOMPSON,TONY,LEE	H024037	459 PC	MVPD	07/09/69
SOWDER,STEVEN,DOUGLAS	H024038	11377	RPD	07/07/58
HARTIN,GY,DEWAYNE	H024039	23152A	MVPD	12/22/50
JONES,WESLEY,EDWARD	H024040	10851	RPD	10/07/67
MCKASKLE,JAMES,EDWIN	H024041	10851	RPD	03/06/69
PONDER,CRAIG,ALLEN	H024042	VOP	RSO	12/20/63
FISHER,BRUCE,WAYNE	H024043	11379.	RSO	12/08/66
WILCOS,FRANK,GLENN	H024044	CRT OR	RSO	12/16/61
DELEON,STANLEY,GREGORY	H024045	40508A	RPD	08/27/65
GORDON,MICHAEL,THOMAS	H024046	23152A	RPD	05/05/51
[ILLEGIBLE],RANDOLPH,BERNARDIII	H024047	40508A	RPD	05/12/67
TODD,RICHARD,ANGEL	H024048	490.5	RSO	08/28/69
CHARLES,ANTHONY,RAY	H024049	20001V	RSO	09/01/69

NAME	BOOKING NUMBER	CHARGE	ARREST AGENCY	DATE OF BIRTH
GORDON,RICHARD,STUART	H024050	4532PC	MARSH	04/06/60
PONCE,HECTOR,AVILA	H024051	11352H	RSO	12/01/39
HERNANDEZ,EDWARD	H024052	11378.	RSO	11/12/64
MCMAHAN,MICHAEL,CHARLES	H024053	508PC	RSO	09/12/44
DEANDA,JESSE,JOE	H024054	484	RSO	06/03/51
LAW,KEITH,EDWARD	H024055	3056PC	PAROL	05/09/56
JAMES,CLEO,JOEL	H024056	11352	RPD	10/29/66
CATANZARO,JOSEPH,FRANK	H024057	484	RSO	01/07/27
BROWN,RONALD,DEAN	H024058	VOP	RSO	03/05/41
SCHUMACHER,MICHAEL,EUGENE	H024059	148PC	MARSH	01/12/65
MAHAN,RONNIE,BERNARD	H024060	23152A	MARSH	11/20/51
BUTTS,ADRAIN	H024061	11352	RSO	08/23/61
MENDEZ,JAIME,ANI	H024062	459	RSO	12/10/60
VARNER,WILLIAM,LEWIS	H024063	B/W WR	RSO	04/23/47
SCOTT,MICHAEL,ANDREW	H024064	853.7	RSO	09/30/64
MITCHELL,PAUL,WILLIAM	H024065	40508A	RSO	09/24/57
POWELL,RONALD,DEAN	H024066	B/W VO	RSO	01/05/61
LOGE,JAMES,SEWARD	H024067	B/W WR	RSO	07/08/57
BOSQUE,DIONICIO,DAVID	H024068	853.7	RSO	09/10/62
WOOLRIDGE,JERRELL,EDWARD	H024069	6126B&	DA	02/15/31
GALLOWAY,JULIUS,LEE	H024070	11351.	RPD	09/15/45

NAME	BOOKING NUMBER	CHARGE	ARREST AGENCY	DATE OF BIRTH
KNEIFL,MICHAEL,PERRY	H024071	B/W WR	RSO	10/23/54
DUGGAN,JUDITH,LAYON	H024074	459 PC	MVPD	03/22/59
GONZALEZ,ISRAEL,RAMIREZ	H024101	11352	RPD	02/21/38
[ILLEGIBLE],FRANCISCO,VERUGO	H024102	11351	RPD	02/18/69
LOPEZ,JORGE,CAMPS	H024103	11351	RPD	02/09/44
YATES,HENRY,JOSEPH	H024104	11352	RPD	08/28/61
BRUSON,PAUL,EMOND	H024105	11351	RPD	03/01/43
HARVEY,KEENAN,GALE	H024106	148.9P	RPD	01/18/55
LOYD,LAMAR,EUGENE	H024107	245A P	RSO	05/25/65
BRINKLEY,BRYAN,LEE	H024108	VOP	MARSH	04/15/64
DAVIS,JAMES,GLENN	H024109	11377	HMPD	02/23/57
DEWILDE,JOHN,RAYMOND	H024110	11378	RSO	08/28/53
PECK,JAMES,CARL	H024144	23152A	CHP	11/27/52
BENNETT,LEANDREW,JR	H024145	11379.	RSO	05/29/58
FARNHAM,THOMAS,ALDEN	H024147	23512A	RPD	05/01/54
[ILLEGIBLE],DAVID,ANDREW	H024148	11352	RPD	10/16/59
WALKER,JERRY,WALTER	H024149	647F P	RPD	08/14/49
CRAIG,THOMAS,JR	H024150	166.4	RPD	06/26/44
STEWART,JAMES,ROBERT	H024151	23512A	RSO	05/14/65
WHITE,KENNETH,BARRON	H024152	273.5	MVPD	02/17/64
GEORGE,GILBERT,DANIEL	H024153	647F P	MVPD	08/14/30

NAME	BOOKING NUMBER	CHARGE	ARREST AGENCY	DATE OF BIRTH
VARGO,DAVID,RAYMOND	H024154	647F P	RPD	05/09/49
DAVIS,RAY,LEE	H024155	4573	RSO	05/18/52
BUTLER,JOHN,PATRICK	H024156	12020	MVPD	08/12/60
GOREE,JOEL,STANLEY	H024157	12020	UCR	09/10/69
ANACLETO,JOSEPH,THOMAS	H024159	40508A	MVPD	07/20/64
FIOCCA,ANTHONY,ANDREW,JR	H024160	23152A	RPD	03/09/65
WILLIAMS,DAVID,LEE	H024161	VOP	RPD	11/06/61
BLACK,JOEL,ALLEN	H024162	FTA	CPD	04/03/65
[ILLEGIBLE],THOMAS,LAWRENCE	H024163	11379	RPD	09/23/64
CERVANTES,FABIAN,ENRIQUE	H024164	11350	RPD	06/04/64
MUNOZ,GABRIEL,MORALES	H024165	496	RPD	09/28/63
ORTEGA,ALBERT,ALLEN	H024166	148.9	RSO	11/18/59
GRAHAM,KARL,INGEMAR	H024167	11352	RPD	08/26/59
TOTAL DEFENDANTS: 87				
STELTON,TAMMY,DEBORAH	H023350	5204A	RSD	06/02/[]
DUVAL,DOROTHY,CURRIE	H023845	647F P	CHP	01/23/
DOWNEY,JOANNE,CAROL	H023846	647F P	RPD	06/15/
EMPRONTO,DENA	H023847	11378	RPD	10/21/
[ILLEGIBLE],PAULETTE	H023848	490.5	MARSH	09/26/
[ILLEGIBLE],GERALDINE,LAYTONIA	H024091	11351	RPD	05/22/

NAME	BOOKING NUMBER	CHARGE	ARREST AGENCY	DATE OF BIRTH
JONES,SONYA,DELPHINE	H024092	10851	RSD	01/10/6
LEWIS,PATSY	H024093	490.5	RPD	05/20/6
[ENTRY ILLEGIBLE]				
[ENTRY ILLEGIBLE]				
[ENTRY ILLEGIBLE]				
[ENTRY ILLEGIBLE]				
AGUILERA,VERONA	H024098	490.5	RPD	09/14/6
GRACIA,DEBORAH,LYNN	H024099	11377A	RPD	04/10/6
[ILLEGIBLE],GRACIELLA	H024100	490.5	RPD	06/20/5
MCNIEL,DAVID,SCOTT	H024111	11550	RPD	01/25/6
RHOADS,RAYMOND,WILLARD	H024112	B/W 11	RSO	06/25/5
HUNICUTT,EDDIE,JOSEPH	H024113	40508A	RSO	08/21/5
GRACIA,MARK,XAVIER	H024114	11377A	RPD	04/29/5
GARCIA,FELIX,MILAN	H024115	23152A	PPD	01/20/4
GARCIA,ROBERT,OCHOAJR.	H024116	11378H	RSO	09/22/59
SOULLIERE,CHARLES,JAMES	H024117	246PC	RSO	05/22/63
HORTON,RODNEY,BERNARD	H024118	11350	RSO	10/10/6
ELLIS,BRETT,PERRY	H024119	833.7	RSO	07/01/6
PADILLA,ANATOLIO	H024120	23102A	RSO	07/03/5
BRAY,MELVIN,LEON	H024121	40508A	RSO	07/25/
ALFARO,LUIS,WILLIAMS	H024122	B/W FT	RSO	08/10/

NAME	BOOKING NUMBER	CHARGE	ARREST AGENCY	DATE OF BIRTH
HASLACKER,STEPHEN,CRAIG	H024123	40508A	RSO	05/26/5
DURAN,RANDY	H024124	40508A	RPD	12/06/5
MORALES,TIMOTHY	H024125	11377H	RSO	04/06/6
LOGG,GILBERT	H024126	853.7P	RPD	04/09/6
ROBINSON,MARVIN,ANTHONY	H024127	3056PC	P/CSD	03/09/5
[ENTRY ILLEGIBLE]				
[ENTRY ILLEGIBLE]				
[ENTRY ILLEGIBLE]				
[ENTRY ILLEGIBLE]				
[ILLEGIBLE],JOHN,GERALD	H024132	40508A	RSO	08/04/6
[ILLEGIBLE],ANDREW,JACK	H024133	4463A	RSO	01/06/6
GANNON,JAMES,KEVIN	H024134	242 PC	RPD	12/17/6
KONIKOW,JASON,ISAAC	H024135	537 PC	RPD	01/16/6
DEVANE,RONALD	H024136	11357	RPD	08/13/4
HAVINS,LARKIN,LINDSEY	H024137	23512A	RPD	07/06/55
BRIZUELA,RICHARD,DELANO	H024138	11550	RPD	04/13/62
NIEDRINGHAUS,CHARLES,CLARK	H024139	11379	RPD	05/12/48
FORD,TIMOTHY,HAMS	H024141	11379.	RSO	05/26/69
DAILEY,EARNEST,EDWIN	H024142	11377	RPD	06/29/63
SMITH,LAWRENCE,MICHAEL	H024143	23152A	RPD	01/15/62
ARENAS,ALFRED,JOSEPH	H024166	11377	RPD	11/12/64

NAME	BOOKING NUMBER	CHARGE	ARREST AGENCY	DATE OF BIRTH
FOSTER,TROY,LEE	H024188	FTA	RPD	09/02/62
SMITH, ANDREW,LINTON	H024189	12020	MVPD	04/17/59
WILSON,ROBERT,JAMES	H024190	23512A	CHP	11/20/
ROBBINS,JAMES,AUGUST	H024193	11377	RPD	05/21/
SHETLEY,JOHN,LEE	H024195	1320	RPD	04/17/
LOGSTON,TERRY,DALE	H024196	23152A	RPD	06/28/
ARROYO,HERIBERTO	H024198	11359	RSD	02/23/
[ILLEGIBLE],EISANDRO,RAMON	H024199	3152A/	CHP	03/02/
[ENTRY ILLEGIBLE]				
[ENTRY ILLEGIBLE]				
[ENTRY ILLEGIBLE]				
[ENTRY ILLEGIBLE]				
PERRYMAN,SHELDON,LEE	H024204	11550	RSO	03/04/6
GUZMAN,JOSE,ROBERTO	H024206	23152	CHP	05/05/6
NUNEZ,FRANK,JAVIER	H024207	20002V	CHP	07/27/5
GUNNER,CALVIN,EUGENE	H024208	28001	MVPD	10/18/6
LIRA,CARLOS	H024209	11550	RPD	12/17/6
IBANEZ,MARTIN	H024210	40508	RPD	07/23/6
STEWART,DAVID,ALAN	H024211	470	MARSH	04/20/68
BENNETT,RODNEY,HIROSHI	H024212	23152	CHP	06/24/5
MCKINNEY,WAYNE	H024213	490.5	RPD	06/20/6

NAME	BOOKING NUMBER	CHARGE	ARREST AGENCY	DATE OF BIRTH
ROSS,WILLIE,ROY	H024214	496	RSD	06/05/6
EARLY,ROBERT,LEROY	H024215	11377	RPD	07/16/4
DEVILLE,MURPHY,WILLIAM	H024216	496. F	RSO	12/13/2
DEVILLE,DONALD,PATRICK	H024217	496 FC	RSO	09/05/3
ARTEAGE,HUMBERTO,BANUELOS	H024218	23152	MARSH	03/07/4
MCCARTHEY,THOMAS,EDWARD	H024219	459 PC	CRPD	05/18/3
GRIZZLE,BART,MICHAEL	H024220	459 PC	RSD	03/04/
MARTINEZ,DAVID,LEAL	H024221	11351	RPD	06/20/
FERNANDEZ,JOSE,SOLEDAD	H024222	11351	RPD	11/25/
[ILLEGIBLE],SAMUEL	H024223	11351	RPD	11/07/
ROSAS,GERARDO,CORI	H024224	11352	RPD	03/16/
GARCIA,DOMINGO,MEJA	H024225	11351	RPD	09/19/
[ENTRY ILLEGIBLE]				
[ENTRY ILLEGIBLE]				
[ENTRY ILLEGIBLE]				
BRUNET,MARYANNE,CAMILLE	H029610	1377H	RSO	07/03/
BURNHAN,DAVID,RYAN	H029611	203	RSO	08/27/
HURST,MICHAEL,BAANDON	H029613	4000A	RSO	08/30/5

NAME	BOOKING NUMBER	CHARGE	ARREST AGENCY	DATE OF BIRTH
YONKER,MARK,ANDREW	H029614	459	RSO	08/03/5
WYATT,EARL,WAYNE	H029616	VOP	RSO	03/24/5
NAVARRO,GUADALUPE,ANTHONY	H029618	PAROLE	RSO	01/04/5
TOTAL DEFENDANTS: 90				

Housing Unit		1	2	3	4	5	6	7	8	Iso.	Inf.	10	11	12	14	15
Section	A					21/	21/	21/	21/		18/14					
	B					21/	42/	21/	21/							
	C					18/		18/	18/							
Dayroom		0 –	0 –	0 20	0 –								0 6		8 2	6 6
Cell	1	4/3	8/4	8/9	2/1					1/1		2/2	8/6	2/3	2/2	2/2
	2	8/5	8/4	8/7	2/2							2/1	8/8	4/5	2/2	2/2
	3	8/8	8/6	8/8	2/2							2/2	8/8		2/2	2/1
	4		8/5	8/7	2/2								8/8		2/2	2/2
	5		8/6	8/8	2/1										2/2	2/2
	6		8/7	8/7	2/2										2/2	2/2
	7														2/2	2/2
TOTAL:		20/16	18/32	18/66	12/10	60/102	63/106	30/93	30/96	1/1	18/14	6/5	32/36	6/8	22/16	20/12
Jail Use Only																
STAT COUNT:		16	32	66	10	102	106	93	96	1	14	5	36	8	16	17
+/-		-4	-16	+18	-2	+42	+43	+33	+36	0	-4	-1	+4	+2	-6	-3

Detox: M
Detox: F
Blueroom: ___ I.R. Room: ___ Printroom: ___ Trusties: M ___ F:

Net Totals: Males 541 Beds 404
Females 77 Beds 80
Total 618 Beds 484
Reporting Officer: Dep. Mark Purkiss

Housing Unit		1	2	3	4	5	6	7	8	Iso.	Inf.	Seg.	11	12	14	15
Section	A					21/	21/	21/	21/		18/14					
	B					21/	42/	21/	21/							
	C					18/		[illegible]								
Dayroom		0 –	0 –	0 22	0 –								0 5		8 5	6 5
Cell	1	4/3	8/4	8/9	2/1					1/7		2/2	8/7	2/5	2/2	2/2
	2	8/5	8/4	8/8	2/2							2/1	8/8	4/3	2/2	2/2
	3	8/7	8/7	8/8	2/1							2/2	8/8		2/2	2/2
	4		8/5	8/6	2/2								8/6		2/2	2/2
	5		8/6	8/9	2/2										2/2	2/2
	6		8/7	8/7	2/2										2/2	2/2
	7														2/3	2/2
TOTAL:		20/15	18/33	18/69	12/10	60/105	63/108	60/98	60/94	1/1	18/14	6/5	32/34	6/8	22/20	20/19
Jail Use Only																
STAT COUNT:		15	33	69	10	105	108	98	94	1	14	5	34	8	20	19
+/-		-5	-15	+21	-2	+45	+45	+38	+34	0	-4	-1	+2	+2	-2	-1

Detox: M
Detox: F
Blueroom: ___ I.R. Room: ___ Printroom: ___ Trusties: M ___ F:

Net Totals: Males 552 Beds 404
Females 81 Beds 80
Total 633 Beds 484

Reporting Officer: Deputy Mark Purkiss

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Housing Unit		1	2	3	4	5	6	7	8	Iso.	Inf.	10	11	12	14	15
Section	A					21/	21/	21/	21/		18/13					
	B					21/	42/	21/	21/							
	C					18/		18/	18/							
Dayroom		0 –	0 –	0 23	0 –								0 7		8 4	6 5
Cell	1	4/3	8/5	8/9	2/1					1/1		2/2	8/8	2/3	2/1	2/2
	2	8/5	8/3	8/8	2/2							2/1	8/7	4/5	2/2	2/1
	3	8/7	8/7	8/8	2/1							2/2	8/8		2/2	2/2
	4		8/4	8/7	2/2								8/8		2/2	2/2
	5		8/5	8/7	2/2										2/1	2/2
	6		8/7	8/8	2/2										2/2	2/2
	7														2/3	2/2
TOTAL:		20/15	18/31	18/70	12/10	60/	63/	60/	60/	1/1	18/	6/5	32/	6/	22/	20/
Jail Use Only																
STAT COUNT:		15	31	70	10	105	103	89	95	1	13	5	38	8	17	16
+/-		-5	-17	+22	-2	+45	+40	+39	+35	0	-5	-1	+6	+2	-5	-4

Detox: M
Detox: F
Blueroom: ___ I.R. Room: ___ Printroom: ___ Trusties: M ___ F:

Net Totals: Males 537 Beds 404
Females 79 Beds 80
Total 616 Beds 484
Reporting Officer: D. Viveros #1408

EXHIBIT 3

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(415) 824-1070

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DONALD LEE McLAUGHLIN, et al., Plaintiffs vs. THE COUNTY OF RIVERSIDE, et al., Defendants.	CASE NO. CV 87-5597 RG PLAINTIFFS' SUPPLEMENTAL MEMORANDUM - HEARINGS

Attached as Exhibit I are samples of the Orange County Jail Probable Cause for Detention Hearing logs. On January 22, 1988, 13 of 51 prisoners were released "no probable cause for continued detention." At 25%, this is significantly above the average of about 10% released in the past year or so of operations. What is more important

is that, in practice, probable cause for detention hearings are usually held within 14 hours of arrest, and rarely later than 24 hours after arrest. During personal observation on March 4, 1988, one prisoner actually received his probable cause for detention hearing 2-1/2 hours after arrest.

From counsel's observations, in person hearings save lives, pain, injury and emotional trauma. These hearings do fulfill the Constitutional requirement for a Judicial determination of probable cause which has been generally interpreted to require a live hearing. These hearings from a judicial perspective, while needing to be expanded in scope and function are, along with initial bail hearings before a Judge, Commissioner or Pro Tem, the minimum initial hearing approach appropriate to Riverside and San Bernardino Counties.

DATED: March 9, 1988

/s/ Richard P. Herman
RICHARD P. HERMAN
JAMES GLICK
PAUL W. COMISKEY
Attorneys for Plaintiff

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* * *

(Exhibit Omitted)

* * *

(Declarations Of Service Omitted)

* * *

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(213) 386-4303

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD LEE McLAUGHLIN, et al., Plaintiff vs. THE COUNTY OF RIVERSIDE, et al., Defendants.	CASE NO. CV 87-5597 RG STIPULATION RE FIRST APPEARANCE

THE PARTIES STIPULATE TO THE FOLLOWING FACTS:

1. Ordinarily the first appearance before a judge or commissioner of a person arrested without a warrant and still in custody without warrants or holds in Riverside County, is at the arraignment.

2. If criminal charges have not been filed, the in-custody arrestee, without warrants or holds, is released at about 5:00 P.M. on the last day for arraignment. If criminal charges have been filed, the arraignment usually takes place on the last day for arraignment. The policy is as set out in Plaintiff's Exhibit 5 (Defendant's 101) attached hereto.

DATED: March 22, 1989

/s/ Richard P. Herman
RICHARD P. HERMAN
JAMES GLICK
PAUL W. COMISKEY
DAN STORMER
Attorneys for Plaintiffs

/s/ Michael Bell
MICHAEL BELL
PAMELA VICTORINE
PAMELA ANDERSON
PETER J. FERGUSON
Attorneys for Defendants

ARRESTED	MUST BE ARRAIGNED BY
SUNDAY: Any time	5:00 P.M. Wednesday
MONDAY: Before 5:00 P.M. (1700)	5:00 P.M. Wednesday
MONDAY: 5:01 P.M. to Midnight 1701 2400	5:00 P.M. Thursday
TUESDAY: Before 5:00 P.M.	5:00 P.M. Thursday
TUESDAY: 5:01 P.M. to Midnight	5:00 P.M. Friday
WEDNESDAY: Before 5:00 P.M.	5:00 P.M. Friday
WEDNESDAY: 5:01 P.M. to Midnight	5:00 P.M. Monday
THURSDAY: Before 5:00 P.M.	5:00 P.M. Monday
THURSDAY: 5:01 P.M. to Midnight	5:00 P.M. Tuesday

	ARRESTED	MUST BE ARRAIGNED BY
FRIDAY:	Before 5:00 P.M.	5:00 P.M. Tuesday
	5:01 P.M. to Midnight	5:00 P.M. Wednesday
SATURDAY:	Any time	5:00 P.M. Wednesday

NOTE: If a legal holiday (a day when the courts are closed) occurs on the day of arrest, the day of arraignment, or on any day in between, the arraignment may be postponed one (1) additional day.

Defts 101

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(Affidavit Of Service Omitted)

• • •

Case No. CV 87-5597 RG

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Date: April 17, 1989
Time: 10:00 a.m.
Courtroom: 16

(Caption Omitted In Printing)

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INTRODUCTION

Plaintiffs Donald Lee McLaughlin, John E. Jones, Diane Simon, Michael Scott Hyde, Brett Hale, David Keiser, Sharon Sweeney and Lavine Hinds, on behalf of themselves, and in their class representative capacity, have moved this court for an order granting a preliminary injunction requiring defendants County of Riverside and the Riverside County Sheriff's Department to provide all persons arrested without a warrant in the County

with a probable cause hearing conducted by a judge, magistrate, court commissioner or other authorized judicial officer within 36 hours of the time of arrest. Plaintiffs urge that this 36-hour probable cause determination is required by the United States Supreme Court decision in *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975), as well as by the Ninth Circuit's decision in *Bernard v. City of Palo Alto*, 699 F.2d 1023 (9th Cir. 1983).

As we discuss below, under controlling law it is clear that plaintiffs' motion for preliminary injunction must be denied. First, as a threshold matter, the named plaintiffs lack standing under Article III of the United States Constitution for purposes of prosecuting this action. This is because plaintiffs have set forth no evidence establishing that these named plaintiffs are likely to be subjected to any *future* deprivation of their constitutional rights as required by *City of Los Angeles v. Lyons*, 461 U.S. 95, 75 L.Ed.2d 675, 103 S.Ct. 1660 (1983). Second, and critically, plaintiffs are not entitled to injunctive relief in the instant case because they have not and cannot demonstrate that issuance of an injunction is necessary in order to avoid any irreparable harm arising from any violation of the United States Constitution. Specifically, as the evidence establishes, the County of Riverside presently provides a probable cause hearing for all persons arrested without warrants within two days (i.e., 48 hours exclusive of Sundays and holidays) of arrest, at the time of arraignment, consistent with the Supreme Court's decision in *Gerstein*, as interpreted by the California Supreme Court in *In re Walters*, 15 Cal.3d 738. 126 Cal.Rptr. 239, 543 P.2d 607 (1975) and expressly sanctioned by California Penal Code sections 991 and 825. Indeed, coupled with the

threshold probable cause review conducted by the arresting officers' Watch Commanders, adherence to the standards of Penal Code sections 991 and 825 currently results in the release of approximately 89%, of all misdemeanor warrantless arrestees within 24 hours of arrest, as well as a substantial portion of felony warrantless arrestees. Quite simply, the County of Riverside has instituted a program for providing probable cause determinations to prisoners that fully complies with the constitutional mandates set forth in *Gerstein* as specified by the provisions of California Penal Code sections 991 and 825. Thus, there is clearly, no need for injunctive relief at this time.

LEGAL ARGUMENT

I.

THE MOTION FOR PRELIMINARY INJUNCTION SHOULD BE DENIED BECAUSE THE NAMED PLAINTIFFS LACK ARTICLE III STANDING TO SEEK EQUITABLE RELIEF IN FEDERAL COURT

A. The Named Plaintiffs Lack Standing To Seek Injunctive And Declaratory Relief

"It goes without saying that those who seek to invoke the jurisdiction of the federal courts must satisfy the threshold imposed by Article III of the Constitution by alleging an actual case or controversy. Plaintiffs must demonstrate a 'personal stake in the outcome' in order to 'assure that concrete adverseness which sharpens the presentation of issues necessary for the proper resolution of constitutional questions. Abstract injury is not enough. The plaintiff must show that 'he has sustained or is immediately in danger of sustaining some direct injury'

as the result of the challenged official conduct and the injury or threat of injury must be both 'real and immediate,' not 'conjectural' or hypothetical.' " *City of Los Angeles v. Lyons*, 461 U.S. 95, 101, 75 L.Ed.2d 675, 103 S.Ct. 1660, 1665.

In *Lyons*, the Supreme Court explained that in order to bring an action for equitable relief in federal court and plaintiff must allege facts showing that it is likely that he will be subjected again to the same illegal conduct which he challenges. *City of Los Angeles v. Lyons*, 461 U.S. 95. There, the plaintiff brought an action for damages and injunctive relief challenging the policy of the Los Angeles Police Department in their use of chokeholds on arrestees, except in situations where deadly force was threatened. In support of his claim Lyons alleged that he had been stopped by Los Angeles police officers for a Vehicle Code violation, that he offered no resistance, and that he was subjected to a chokehold. While the Ninth Circuit initially had determined that Lyons alleged facts sufficient to establish Article III standing to seek injunctive relief by alleging that he had been subjected to the challenged chokehold procedure, the Supreme Court in granting certiorari, reversed the Ninth Circuit, holding that:

> "Lyons' standing to seek the injunction requested depended upon whether *he* was likely to suffer future injury from the use of chokeholds by police officers." *Id.*, 461 U.S. at 105, 103 S.Ct. at 1666.

In the absence of facts to support such a finding "threat of future injury was mere speculation and conjecture, and thus Lyons lacked standing to seek injunctive relief in

federal court." *Palmer v. City of Chicago*, 755 F.2d 560, 572 (7th Cir. 1985) citing to *City of Los Angeles v. Lyons, supra*, 461 U.S. at 110, 103 S.Ct. at 1669. The issue of standing bears directly upon the power of a court to entertain the action. *Foster v. Center Township LaPorte County*, 798 F.2d 237, 241 (7th Cir. 1986). "Analysis of standing under Article III focuses on the party bringing a claim, not on the claim itself." *Id.*

Applying the *Lyons* standard to the named plaintiffs, it is clear that they lack standing to prosecute the instant action for injunctive relief. Like *Lyons*, plaintiffs here have asserted no facts to support a claim sufficient to invoke the equitable jurisdiction of this court, i.e., that they will ever *again* suffer the harms which they challenge. This deficiency is fatal. *City of Los Angeles v. Lyons*, 461 U.S. 95, 75 L.Ed.2d 675, 103 S.Ct. 1660; *Foster v. Center Township LaPorte County*, 798 F.2d 237 (applying *Lyons* to a plaintiff seeking to enjoin administration of Indiana's poor relief statute, finding that even though plaintiff was a welfare recipient she was not "in immediate danger of sustaining a direct injury as the result of the defendants' conduct in establishing . . . the guidelines" and thus she lacked Article III standing to sue); *Palmer v. City of Chicago*, 755 F.2d 560 (holding that convicted defendants who could allege only a past harm in their challenge to the prosecutor's policy of withholding certain exculpatory evidence lacked Article III standing to seek injunctive relief); *Trotter v. Klincar*, 566 F.Supp. 1059, 1061 (N.D. Ill. 1983), aff'd 748 F.2d 1177 (7th Cir. 1984) ("[E]ven if we assume that Trotter was denied his right to a preliminary parole revocation hearing, this does not establish a real and

immediate threat that he would again be denied a preliminary parole revocation hearing in the future, entitling him to equitable relief." 566 F.Supp. at 1061.)

Indeed, *Lyons* has recently been applied in a case with facts strikingly similar to those of the instant action. In *Robinson v. City of Chicago*, [to be published at 868 F.2d 959] (7th Cir. 1989)[1], the Court of Appeals reversed an order granting injunctive and declaratory relief in a class action suit seeking to prevent the Chicago City Police Department from holding warrantless arrestees in excess of 72 hours without a probable cause determination. Specifically, the named plaintiffs in the class action asserted that the police department's policy of holding arrestees without a probable cause determination beyond 72 hours violated the Supreme Court's decision in *Gerstein*. None of the named plaintiffs, however, had or could establish that he would in the future again be arrested and hence suffer the purported constitutional violation so as to provide standing under *Lyons* to assert a claim for injunctive relief. Thus, the Court held:

> "[A]s with the *Lyons* plaintiff, neither Richardson nor the Doulin plaintiffs can allege that it is reasonably likely that they will again encounter the police. [Citation.] Because the various plaintiffs' future conduct presumably will give the police no probable cause to arrest them, they cannot expect that they will encounter the police or, if they did, that the police would again detain them pending investigation or fingerprint clearance. Thus, even if the police were to continue to detain others for investigation

[1] A copy of *Robinson* utilizing the Westlaw pagination is attached hereto as Exhibit 102 for the court's convenience.

> . . . the possibility that Richardson would suffer any injury as a result of that practice is too speculative. Richardson has not alleged and has not shown that he is in immediate danger of being directly injured by the same official conduct challenged as unconstitutional – post-arrest detention for investigation prior to a probable cause hearing." (Exh. 102, pp. 7-8.)

Williams v. City of Chicago, 609 F.Supp. 1017 (D.C. Ill. 1985) is similarly on point. There, the plaintiffs sought to enjoin a purported city-wide policy "which unconstitutionally authorize[d] police officers to detain arrestees indefinitely without appointment of counsel, judicial determination of probable cause or a bonding hearing while the officers complete their investigation of the arrestees." *Id.* at 1018. Relying on *Lyons*, the Court held:

> "Without a showing of any continuing, present adverse effects, past exposure to illegal conduct does not in itself show a present case or controversy for purposes of injunctive relief. [Citations.] Even if we assume that Williams was illegally detained by the police, she has not alleged or shown a real and immediate threat that she will again be detained in the future. Thus, Williams has not satisfied the prerequisites for seeking injunctive relief." *Id.*; accord *Strandell v. Jackson County*, 634 F.Supp. 824 (S.D. Ill. 1986).

An identical result was reached in *Lambert v. McFarland*, 612 F.Supp. 1252, 1269-1270 (D.C. Ga. 1984) where the plaintiff's claim that he was never given a prompt judicial determination of probable cause pursuant to *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854, was determined to be insufficient to establish the necessary Article III standing to seek injunctive relief in federal court. The Court in

Lambert relied upon *Lyons* and *O'Shea's v. Littleton*, 414 U.S. 488, 94 S.Ct. 669, 39 L.Ed.2d 674 (1974) in concluding that the plaintiff lacked standing to sue for equitable relief:

> "In *Lyons*, the lower court found as a matter of fact that the police department in the City of Los Angeles authorized the use of the chokehold by insufficiently trained offices in situations where no one is threatened by death or bodily harm. Even given this finding, the Supreme Court held that the plaintiff did not have standing to satisfy the case or controversy requirement of Article III of the United States Constitution. . . .
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> "In O'Shea, the Supreme Court did not find an active case or controversy, because it assumed that the plaintiffs would conduct their activities within the law, and so avoid prosecution and conviction as well as exposure to the challenged course of conduct . . . since the Supreme Court has refused, in *O'Shea* . . . to assume that an individual will break the law and thereby encounter the police again, the plaintiff in the present case has no standing to seek injunctive relief." *Lambert v. McFarland, supra*, 612 F.Supp. at 1269-1270.

The United States Supreme Court's holding in *City of Los Angeles v. Lyons*, as applied to the facts of the instant case, compels the conclusion that the named plaintiffs lack the necessary standing required by Article III to pursue this federal action for injunctive relief to prohibit "misconduct" by the County of Riverside with respect to providing probable cause hearings. There is no evidence nor even allegations suggesting that the named plaintiffs are likely to be arrested again and held in a Riverside

County jail facility without a proper probable cause hearing even assuming that the named plaintiffs may, at the time the Second Amended Complaint was filed or the class certified, have been in custody and not yet received a probable cause determination in no way confers standing on them to assert a claim for *injunctive* relief that seeks creation of a program for conducting probable cause hearings for *future* arrestees. Clearly, under *Lyons*, the named plaintiffs lack standing to prosecute an action for injunctive relief which, on the facts presented, will result in no benefit to them. Moreover, as we discuss below, the mere fact that the instant suit has been brought as a class action in no way aids plaintiffs' position.

B. The Fact That This Action Has Been Brought As A Class Action Does Nothing To Confer Article III Standing Where It Otherwise Does Not Exist. In Fact, The Contrary Is True – Unless The Named Plaintiffs Have Article III Standing – They Cannot Represent The Class.

The fact that the named plaintiffs have brought this action representing a purported class in no way absolves them of the jurisdictional obligation to establish facts sufficient to support a finding that they have Article III standing in their own right with respect to prospective relief:

> " 'That a suit may be a class action . . . *adds nothing to the question of standing*, for even named plaintiffs who represent a class "must allege and show that they personally have been injured, not that injury had been suffered by another, unidentified members of the class to which they belong and which they purport to represent." ' " *Palmer v. City of Chicago*, 755 F.2d

at 570, quoting *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 40, n. 20, 96 S.Ct. 1917, 1925, n. 20, 48 L.Ed.2d 450 (1976). emphasis in *Palmer*.

As the Supreme Court has explained:

> "A named plaintiff in a class action must show that the threat of injury in a case such as this is 'real and immediate,' not 'conjectural' or 'hypothetical.' A litigant must be a member of the class which he or she seeks to represent at the time the class action is certified by the district court." *Sosna v. Iowa*, 419 U.S. 393 , 95 S.Ct. 553, 559 (1974), citations omitted.
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> "Moreover, if none of the named plaintiffs purporting to represent a class established the requisite of a case of controversy with the defendants, none may seek relief on behalf of himself or any other member of the class." *O'Shea v. Littleton*, 414 U.S. 488, 94 S.Ct. 669, 675.

Further, at the time the complaint is filed, the named defendant must have a live case or controversy and that controversy must continue until the class action is certified. *Sosna v. Iowa*, 95 S.Ct. at 559.

Since plaintiffs have established no facts to support a finding that *they* likely would be subject *again* to the alleged unconstitutional conduct they challenge, they do not have Article III standing in their own right. *City of Los Angeles v. Lyons*. Thus, no case or controversy with respect to prospective relief existed at the time the Second Amended Complaint was filed; needless to say, subsequent certification of the class would do nothing to alter that fact. Indeed, this was precisely the holding of the Seventh Circuit in *Robinson v. City of Chicago*. As previously noted, there the Court concluded that the

named plaintiffs in a class action lacked standing to seek declaratory and injunctive relief with respect to the City's purported improper delay in providing probable cause hearings under *Gerstein*. The named plaintiffs argued that even they did not have individual standing to invoke prospective injunctive relief, the fact that "the class consisted of all in custody" meant that "someone in the class had to have standing at the time the complaint was filed as well as at the time the class was certified." (Exh. 102: p.9.) The Seventh Circuit however, rejected the contention:

> "Thus, Richardson argues, 'the constant existence of a class of persons suffering from the deprivation is certain' [citation] and 'new persons with "live" claims for injunctive relief . . . are constantly entering the category of those currently subject to defendants' alleged practice.' [Citation.] If Richardson's position were correct, the *Lyons'* plaintiff could have acquired standing simply by pleading his claim as a class action. Instead, *Lyons* relied upon *O'Shea* [citation], where the court held that a class does not become a separate entity until it is certified and, in turn, that a class will not be certified unless the named plaintiff *has standing at that time. . . .* [Para.] *[A] representative's claim must at least be live when he files the case, even if the representative's case becomes moot before the class is certified. . . . In contrast, Richardson never had a stake in the declaratory relief to lose. . . .* " Exh. 102, pp. 9-10; emphasis added.

Similarly recognizing that a personal stake in the outcome – standing to seek injunctive relief – was a necessary precondition to bringing a class action for injunctive relief, the district court in *Williams v. City of*

Chicago, a case brought as a class action, followed *Lyons* and granted a defense motion to dismiss.

> "[W]e do not believe the Supreme Court [in *Lyons*] would allow a plaintiff like Williams, who *never* had standing to sue for injunctive relief on her own behalf, to claim standing to sue for such relief on behalf of a class." *Williams v. City of Chicago*, 609 F.Supp. at 1019, emphasis in original.[2]

While no known published Ninth Circuit case has addressed precisely these issues, this Circuit's leading

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[2] Defendants are mindful that an earlier district court opinion in the Seventh Circuit, *Lewis v. Tully*, 99 F.R.D. 632 (N.D. Ill. 1983) reached a contrary result, concluding without analysis that the *Lyons* rule did not apply to certified class actions. We note, however, that in *Robinson v. City of Chicago*, the Seventh Circuit rejected the *Lewis* Court's reasoning. See Exh. 102, pp. 9-10. In *Lewis v. Tully*, the trial judge had addressed a defense challenge to the case raising Article III, and concluded under *Gerstein*, the fact that the named plaintiff had no personal stake in the outcome was not fatal. See *Lewis v. Tully*, 96 F.R.D. 370, 372-375 (1982). This determination, first made before the issuance of the Supreme Court's opinion in *City of Los Angeles v. Lyons*, was later reconsidered in light of *Lyons*. As the *Williams* Court noted in criticizing *Lewis*, the *Lewis* Court confused "mootness" with "standing" and ignored the fact that the very case upon which the Supreme Court most heavily relied in reaching its conclusion in *Lyons* was itself a class action. *Williams v. City of Chicago*, 609 F.Supp. at 1019-1020; see *O'Shea v. Littleton*, 414 U.S. at 491, 94 S.Ct. at 673. Moreover, the *Lewis* Court reads *Gerstein v. Pugh* as if that case stated a specific exception to the general rule expressed in *Lyons*. *Gerstein* was not only decided a decade before *Lyons*, but there is no indication in *Gerstein* that Article III was either raised as an issue or considered by the Court.

opinion on Article III standing since *Lyons*, *LaDuke v. Nelson*, 762 F.2d 1318 (9th Cir. 1985), is not to the contrary. In that case, the Court of Appeals addressed an appeal from a final judgment in which the INS had been enjoined from conducting warrantless "checks" for undocumented aliens at migrant farmer worker housing. The case originally had been filed in 1977 and was certified as a class action in 1979 years before *Lyons* was decided. In analyzing whether the plaintiffs had Article III standing to support the injunctive relief they had won, the Court found four factors in *LaDuke* distinguishing that case from *Lyons* and mandating a different result. Relevant to the instant action was the Ninth Circuit's fourth distinguishing factor, that *LaDuke* was a certified class action under Federal Rule of Civil Procedure 23(b)(2). Thus, since the case had already been certified as a class action, the issue of standing, on appeal, focused not on the named plaintiff, but rather on the class as a whole. This was true because a determination of the Article III standing of the class' named representative was an issue which presumably had been determined by the trial court prior to certification of the class. The Ninth Circuit recognized in *LaDuke v. Nelson*, fully consistent with *Williams v. City of Chicago* and *City of Los Angeles v. Lyons*:

> "While the fact of certification would preserve a class' standing even after the named individual representatives have lost the required 'personal stake,' *certification is not sufficient in itself to bestow standing on individuals or a class who lacked the requisite personal stake at the outset.*" *LaDuke v. Nelson, supra*, 762 F.2d at 1325; emphasis added.

Since the named plaintiffs have failed to establish facts sufficient to establish their own personal stake in an action for injunctive relief, they do not have Article III standing and cannot maintain this action either on their own behalf or on behalf of some purported class.

C. The "Capable Of Repetition Yet Evading Review" Doctrine Cannot Save The Claim Of A Plaintiff Who Does Not Have Article III Standing To Bring The Case. That Doctrine Only Applies When Plaintiff Originally Had Standing, But Due To The Passage Of Time, The Case Has Become Moot.

The "capable of repetition yet evading review" doctrine allows a plaintiff who has standing *at the time the case is filed* to continue to pursue the action in spite of the fact that the passage of time has eliminated the facts giving rise to the actual controversy between the parties. The classic example of this is *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), where the plaintiff's challenge to state laws which restricted her right to abortion was no longer a live controversy by the time the case was before the Supreme Court. When the plaintiff's case reached that Court, she was no longer pregnant. Nonetheless, since the problem was capable of repetition, and might otherwise evade review, the Court reached the substantive issues underlying the case.

The doctrine has an additional twist when a case is brought, not as an individual action, but rather is certified as a class action. In that situation, if the case of the named plaintiff becomes moot, a court may address the underlying issues so long as some member of the class has a live claim. Thus while

> "[t]here must be a live controversy at the time this Court reviews the case . . . [t]he controversy may exist, however, between a named defendant and a member of the class represented by the named plaintiff, even though the claim of the named plaintiff has become moot." *Sosna v. Iowa*, 95 S.Ct. at 559.

However, the "capable of repetition yet evading review" doctrine only comes into play *after* the named plaintiff has satisfied the Article III case or controversy prerequisites as interpreted by *Lyons*. *Sosna v. Iowa*, 95 S.Ct. at 559. Moreover, in *Lyons*, the Supreme Court rejected the plaintiff's argument that his constitutional challenge to the chokehold procedure would "evade review." Since that claim remained to be litigated "in his suit for damages; in no sense [did] that claim 'evade' review." *City of Los Angeles v. Lyons*, 461 U.S. 95, 109, 103 S.Ct. 1660, 1699. Indeed, both these factors were considered by the Seventh Circuit in *Robinson v. City of Chicago*, in rejecting the "capable of repetition" doctrine under facts virtually identical to the instant case. There, too, in an effort to establish standing to obtain injunctive relief requiring the City of Chicago to provide prompt probably cause hearings for arrestees under *Gerstein*, the named class representatives argued that by its very nature the alleged constitutional violation in question was "capable of repetition, yet likely to evade review." The Seventh Circuit, however, in rejecting the contention, accurately noted that "the capable-of-repetition doctrine does not apply except to those exceptional situations where a plaintiff can reasonably show that he will again be subject to the alleged illegality." Exh. 102, p. 10. In short, the named plaintiff must establish his initial standing before the

"capable of repetition" doctrine comes into play. In addition, the *Robinson* court noted that the defendants alleged constitutional violations were in fact fully capable of review in the context of an action for damages. *Id.* at p. 10 ["Robinson could have achieved the same result as reached here by suing the City for damages; the court's holding that the General Order was unconstitutional would have served as res judicata in any subsequent action. Robinson most likely chose not to pursue class-wide damages to avoid the attendant notice requirements, but '(t)here is no need to throw away a venerable constitutional rule just to retain a replaceable champion'"].[3]

Since the named plaintiffs in the instant action have not established facts sufficient to establish Article III standing for themselves, the "capable of repetition" doctrine has no application to his case. A case cannot become moot which has never existed as a valid case or controversy to begin with. See *Sosna v. Iowa*, 95 S.Ct. at 559.

Because the named plaintiffs lack standing to seek and obtain injunctive relief, the motion for preliminary injunction should be denied.

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[3] Plaintiffs, of course, have not filed an action for damages in the instant lawsuit.

II.

THE MOTION FOR PRELIMINARY INJUNCTION MUST BE DENIED BECAUSE PLAINTIFFS CANNOT DEMONSTRATE THAT THEY WILL SUFFER ANY IRREPARABLE HARM ARISING FROM ANY ALLEGED VIOLATION OF THEIR CONSTITUTIONAL RIGHTS, SINCE DEFENDANTS HAVE NOW INSTITUTED PROCEDURES CONSISTENT WITH THE REQUIREMENTS OF THE CONSTITUTION AS SET FORTH IN *GERSTEIN V. PUGH*.

It is axiomatic that in order to obtain a preliminary injunction a plaintiff must demonstrate that in the absence of injunctive relief, he or she will suffer irreparable injury as the result of defendant's actions and the likelihood of success on the merits of the suit. *Los Angeles Memorial Coliseum v. Nat. Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). In the instant case, plaintiffs have sought an injunction against the County of Riverside and its entities requiring defendants to provide persons arrested without a warrant with a probable cause hearing before a magistrate, court commissioner, or other judicial officer, within 36 hours of arrest. Plaintiffs argue that such a probable cause hearing is mandated by the United States Supreme Court's decision in *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854, as well as by the Ninth Circuit's decision in *Bernard v. City of Palo Alto*, 699 F.2d 1023. In support of their application for injunctive relief, plaintiffs submit arrest records that are almost two years old – from 1987 – purporting to show the number of arrested persons who were kept in custody without receiving a prompt probable cause determination. Thus, urge the plaintiffs, in order to avoid "continued deprivation of constitutional rights," it is "necessary" that this court issue an injunction.

As we discuss below, the County of Riverside has now instituted a program by which individuals arrested without a warrant are taken before a judicial officer for a probable cause determination within two days (i.e., 48 hours excluding Sundays and holidays) of arrest, at the time of arraignment, as specified by California Penal Code section 991 – a statute designed by the Legislature to meet the requirements of *Gerstein* as interpreted in the California Supreme Court decision *In re Walters*, 15 Cal.3d 738, 126 Cal.Rptr. 239, 543 P.2d 607 – and as specified in Penal Code section 825. Thus, defendants submit that injunctive relief is not necessary in this case because the present means for providing probable cause determinations to persons arrested without a warrant fully meets the requirements of *Gerstein* and, indeed, results in the release of the majority of warrantless arrestees within 24 hours of arrest.

Gerstein involved a constitutional challenge to Florida procedures under which criminal defendants charged by a prosecutor's information could be detained for extended periods. Specifically, under those procedures, "[t]he only possible methods for obtaining a judicial determination of probable cause were a special statute [*sic*] allowing a preliminary hearing after 30 days . . . and arraignment, which . . . was often delayed a month or more after arrest." 420 U.S. at 106, 95 S.Ct. at 859. While noting that a "policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest," the Court observed that once a suspect is in custody, "the state's reasons for taking summary action

subside" and the "suspect's need for a neutral determination of probable cause increases significantly." 420 U.S. at 113-114, 95 S.Ct. at 863. Thus, the Supreme Court held that "the Fourth Amendment requires a judicial determination of probable cause as a perquisite to extended restraint of liberty following arrest." *Id.* at 114, 95 S.Ct. at 863.

Significantly, in *Gerstein*, the Supreme Court did not attempt to "mandate a specific timetable" for probable cause determinations. *Schall v. Martin*, 467 U.S. 253, 275, 104 S.Ct. 2403, 2415, 81 L.Ed.2d 207 (1984). Rather, the Court emphasized that the Constitution does not mandate a uniform system of pretrial criminal procedure and that states were to be provided flexibility in incorporating the probable cause determination into their own existing pretrial procedures. Thus, the Court held:

> "There is no single preferred pretrial procedure, and the nature of the probable cause determination usually *will be shaped to accord with a State's pretrial procedure viewed as a whole*. While we limit our holding to the precise requirement of the Fourth Amendment, we recognize the desirability of flexibility and experimentation by the states. *It may be found desirable for example to make the probable cause determination at the suspect's first appearance before a judicial officer* [citation], or the determination may be incorporated into the procedure for setting bail or fixing other conditions of pretrial release. . . . Whatever procedure a State may adopt, it must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." *Gerstein v. Pugh*, 420 U.S. at 123-125, 95 S.Ct. at 868-869; emphasis added.

Based upon the express language of *Gerstein*, in *In re Walters*, 15 Cal.3d 738, 126 Cal.Rptr. 239, 543 P.2d 607, the California Supreme Court held that the constitutional requirements articulated in *Cerstein* would be met if persons arrested for a misdemeanor without a warrant received a probable cause determination at the time of arraignment, i.e., within two days after a suspect's arrest. *Id.* at 15 Cal.3d 750. At the arraignment, the defendant was entitled to ask a judicial officer to review any documents pertinent to the arrest, including a sworn complaint, or the police or other report which forms the basis of the complaint and arrest. 15 Cal.3d at 751. Since the probable cause determination takes place at arraignment, the detainee is entitled to be represented by counsel and to present his own evidence to the judicial officer. 15 Cal.3d at 750, 752-753.

Consistent with the California Supreme Court's determination in *In re Walters* that *Gerstein* required a probable cause determination at the time of arraignment, the California Legislature enacted Penal Code section 991. See *People v. Ward*, 188 Cal.App.3d Supp. 11, 15, 235 Cal.Rptr. 287 (1986). Penal Code section 991 provides that if a "defendant is in custody at the time he appears before the magistrate for arraignment and, if the public offense is a misdemeanor to which the defendant had pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant, shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof." In making the probable cause determination at arraignment, the magistrate is permitted to consider any warrant of arrest, along with supporting documents. If the court

determines that no probable cause exists, it "shall dismiss the complaint and discharge the defendant." Under Penal Code section 825, a detainee is required to be taken before a magistrate for arraignment within "two days" of arrest, excluding Sundays and holidays.[4]

In accordance with Penal Code sections 991 and 825, as well as the dictates of *Gerstein* as interpreted by the California Supreme Court in *In re Walters*, the County of Riverside presently advises all arrestees of their right to a probable cause determination at the time of arraignment as well as their right to have counsel present at that time, and, indeed, probable cause determinations may be conducted at arraignment. Declaration of the Honorable

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[4] Penal Code section 825 provides in pertinent part:

> "The defendant must in ail cases be taken before the magistrate without unnecessary delay, and, in any event, within two days after his arrest, excluding Sundays and holidays; provided, however, that when the two days prescribed herein expire at a time when the court in which the magistrate is sitting is not in session, such time shall be extended to include the duration of the next regular court session on the judicial day immediately following."

There is currently a conflict among the California Courts of Appeal as to whether the term "two days" as sued [sic] in section 825 means 48 hours from the time of arrest, excluding Sundays and holidays (*People v. Chambers*, 276 Cal.App.2d 89, 80 Cal.Rptr. 672 (1969); *People v. Lee*, 3 Cal.App.3d 514, 421 [sic], 83 Cal.Rptr. 715 (1970), cert. denied, 402 U.S. 999, 91 S.Ct. 2175 (1971); *People v. Ross*, 236 Cal.App.2d 364, 368, 46 Cal.Rptr. 41 (1963); *Youngblood v. Gates*, 200 Cal.App.3d 1302, 1335-1337, 246 Cal.Rptr. 775 (1988) (George, J. dissenting) or two "calendar" days from the time of arrest (*Youngblood v. Gates*, 200 Cal.App.3d 1302).

Ronald L. Taylor, Exh. 103; Declaration of Peter Kiyasu, Exh. 104. Arraignments are conducted during regular business hours every day, excluding Saturdays, Sundays and holidays. *Id.* In addition, as a matter of course and policy, the Watch Commanders on duty in all of the police agencies in Riverside County scrutinize arrest reports of each arrestee for purposes of determining whether there was probable cause to arrest and, if probable cause is lacking, will order the prisoner released. Exh. 105.[5] As a review of log sheets tracing disposition of warrantless arrestees for a three-day period from Sunday, March 19, 1989, through Tuesday, March 21, 1989, indicates, the County of Riverside's present policy of providing probable cause determinations at arraignment, coupled with threshold probable cause determinations made by the supervisors of the arresting officers, results in the majority of warrantless arrestees being released within 24 hours and the majority of remaining arrestees held over for further proceedings or other warrants, within two days. Declaration of Larry Smith, Exh. 106 [Exhs. C and D thereto]. Indeed, a warrantless arrestee being held beyond the statutory periods of sections 991 and 825 without a hearing is the exception and not the rule, and hardly indicative of any policy or practice on the part of the County of Riverside to prevent a prisoner from receiving a proper probable cause determination.

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[5] Exhibit 105 consists of the declarations of the respective Chiefs of Police of the cities of Riverside, Perris, Corona, Indio, Hemet, Desert Hot Springs, Cathedral City, San Jacinto, Blythe, Coachella and Banning, as well as the area commander of the California Highway Patrol and the station commanders for the Riverside County Sheriff's stations in Banning, Hemet, Indio, Blythe, Moreno Valley and Lake Elsinore.

Defendants respectfully submit that the County of Riverside's current program fully complies with the provisions of California Penal Code sections 991 and 825 and meets the requirements of *Gerstein*. In setting up the time of arraignment as an appropriate time period for making a probable cause determination, the California Legislature, consistent with the Supreme Court's invitation in *Gerstein*, has incorporated the probable cause determination into its own pretrial procedures – procedures which in many respects provide a defendant with considerably more protection than required under *Gerstein*, i.e., the presence of an attorney and the full benefits of an adversarial proceeding before a judicial officer.

Defendants are aware that in *Bernard v. City of Palo Alto*, 699 F.2d 1023, the Ninth Circuit suggested that under *Gerstein*, a probable cause determination should, in the absence of exigent circumstances, be made within 24 hours after arrest in light of the public entity's admission in that case that the "administrative steps incident to arrest" could be completed within 10 hours. Defendants are also aware that in *Scott v. Gates*, United States District Court Case No. CV 84-8647 RG, this court determined that the County of Orange was required to provide a probable cause determination to warrantless arrestees within 36 hours of arrest, except in exigent circumstances. Yet, defendants submit that the measures taken by the County of Riverside with respect to persons arrested without a warrant differ greatly from the procedures described in *Bernard*, and those apparently before this court in *Scott* and that the legal arguments raised herein were neither raised nor addressed in those cases. Indeed, in order to determine that the County of Riverside, under

its present procedures which fully comply with the dictates of *Gerstein* as interpreted by the California Supreme Court in *In re Walters* and embodied in Penal Code sections 991 and 825, violates the Constitution, would require this court to expressly hold section 991 unconstitutional – a point neither raised nor addressed in *Bernard* or, apparently, *Scott*.

Significantly, at least one federal appellate court has recognized that by its plain terms, *Gerstein* expressly permits a state to prescribe a time period for providing a probable cause hearing up to 72 hours after arrest. In *Williams v. Ward*, 845 F.2d 374 (2d Cir. 1988), the Court of Appeals held that a state's procedure for providing a probable cause determination at arraignment within 72 hours of arrest was constitutionally permissible under *Gerstein*. As have the plaintiffs in the instant case (and presumably the plaintiffs in *Bernard* and *Scott*), the plaintiffs in *Williams* "[d]rawing upon the reference in *Gerstein* to 'a brief period of detention to take the administrative steps incident to arrest,' . . . contend[ed] that an arrestee is constitutionally entitled to a probable-cause hearing as soon as would be reasonably possible under conditions that are assumed to be relatively ideal." 845 F.2d at 385-386. The Court of Appeals, however, rejected this simplistic interpretation of *Gerstein*, holding (at 386):

> "The case law simply does not support this rule. *Gerstein* itself stressed the need for flexibility and expressly stated that a probable-cause determination might be made at the first appearance before a judicial officer *or* incorporated into procedures for pretrial release. [Citations.] That alone is a dispositive statement that completion of the 'administrative steps incident

> to arrest' doe[s] not trigger a right to an immediate probable-cause hearing in light of the fact that numerous other steps are necessary to complete the pretrial release procedures into which the probable-cause determination may be merged. The ALI [Model Code of Pre-Arraignment] procedures referred to in *Gerstein*, moreover, do not require a probable-cause determination at the first appearance. [Citation.] Finally, *Schall [v. Martin, 467 U.S. 253, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984)]* expressly approved the possibility that, since probable cause need not be found at the initial appearance under the Family Court Act, a probable-cause hearing might be delayed until 3 (and sometimes 6) days after the initial appearance."

The Court continued (also at 386):

> "The Court . . . recognized that states might employ procedures that are more complex than the minimum ex parte hearing described in *Gerstein*, and that states may wish to combine probable-cause hearings with procedures for fixing the terms of pretrial release [citation]. In addition, by endorsing the procedures of the ALI Model Code, the court recognized that states could constitutionally choose to employ adversarial procedures albeit two 'court days' after arrest, to determine probable cause. [Citation.] Similarly, in *Schall*, the Supreme Court expressly upheld procedures that entitled an accused juvenile 'to a formal adversarial probable cause hearing within 3 days of his initial appearance.' [Para.] The Supreme Court's endorsement of such a vast array of procedures, along with its recognition that additional procedures require additional time, *indicate that the constitutional 'promptness' of a probable cause hearing must be determined in light of the totality of the processes afforded the defendant*." Emphasis added.

Thus, in *Williams*, the Second Circuit noted that in light of the fact that "the use of arraignment procedures to determine probable cause provides members of the plaintiff class with benefits that would not be available if probable cause were determined through the use of minimal ex parte procedures immediately after completion of the 'administrative steps incident to arrest,'" these "'procedural benefits provided to arrestees under New York City's arraignment system justify constitutional arrest-to-arraignment periods of seventy-two hours in length." *Id.* at 387. Indeed, as the *Williams* court observed, conducting probable cause determinations at the time of arraignment provides concrete benefits to an arrestee that more than justify the slight delay that may result from scheduling and conducting a full-blown adversarial proceeding:

> "In particular, the accused is present at the arraignment and has the benefit of counsel in attacking the sufficiency of the charging instrument. More importantly, . . . arraignments involve far more than probable-cause determinations. Before arraignment, prosecutors both review the appropriateness of the charge against an arrestee and make a recommendation with regard to the possibility of pretrial release. In addition, the arrestee, with the assistance of defense counsel, may negotiate a final disposition at arraignment. . . . In other cases, the court may set bail or other conditions of pretrial release." *Id.* at 845 F.2d at 387.

Quite simply, in *Williams*, the Court correctly determined that *Gerstein* requires a court to take into account the *totality* of the processes afforded to an arrestee by the

particular criminal justice system in determining the permissible amount of delay between the time of arrest and providing a probable cause determination in the context of such procedures. This is, of course, an aspect of *Gerstein* not addressed in *Bernard v. City of Palo Alto*, 699 F.2d 1023, or other federal appellate decisions requiring probable cause determinations less than 48 hours after an arrest. See *Williams v. Ward*, 845 F.2d at 386, fn. 15. We note that the Supreme Court denied review in *Williams*. See 109 S.Ct. 818, 102 L.Ed.2d 807.

Under the standards enunciated by the Supreme Court in *Gerstein*, as interpreted by the Court in *Williams v. Ward*, it is plain that the present system utilized by the County of Riverside for conducting probable cause determinations adequately meets the requirements of the Constitution. Pursuant to the provisions of the California Penal Code, individuals arrested without a warrant and in custody must receive the opportunity for a probable cause determination within "two days" of arrest (excluding Sundays and holidays), i.e., at arraignment. As the data attached to the instant opposition demonstrate, currently the vast majority of individuals arrested without a warrant are in fact arraigned within the statutory two-day period; indeed, the majority of arrestees are released without arraignment within 24 hours of arrest. Exhibit 106 [Exhs. C and D thereto]; Exhibit 101, Exhibit 107.

The only evidence offered by plaintiffs to support their motion for preliminary injunction is over two years old. As the evidence submitted by defendants indicates, under present procedures, the County of Riverside and its entities are in full compliance with the requirements of the United States Constitution with respect to providing

probable cause determinations to those individuals arrested without a warrant. Because the County of Riverside is currently complying with both the provisions of California law and the United States Constitution, there is simply no need for an injunction in this case. Thus, the motion for preliminary injunction should be denied.

CONCLUSION

For the foregoing reasons, defendants respectfully submit that the motion for preliminary injunction should be denied.

Dated: April 7, 1989.

Respectfully submitted,

FERGUSON, PRAET & SHERMAN
FIDLER & BELL
GREINES, MARTIN, STEIN & RICHLAND
MARTIN STEIN
PAMELA VICTORINE
TIMOTHY T. COATES

By /s/ Timothy T. Coates
Timothy T. Coates

Attorneys for Defendants
County of Riverside and
Cois Byrd, Sheriff of
Riverside County

ARRESTED	MUST BE ARRAIGNED BY
SUNDAY: Any time	5:00 P.M. Wednesday
MONDAY: Before 5:00 P.M. (1700)	5:00 P.M. Wednesday
MONDAY: 5:01 P.M. to Midnight 1701 2400	5:00 P.M. Thursday
TUESDAY: Before 5:00 P.M.	5:00 P.M. Thursday
TUESDAY: 5:01 P.M. to Midnight	5:00 P.M. Friday
WEDNESDAY: Before 5:00 P.M.	5:00 P.M. Friday
WEDNESDAY: 5:01 P.M. to Midnight	5:00 P.M. Monday
THURSDAY: Before 5:00 P.M.	5:00 P.M. Monday
THURSDAY: 5:01 P.M. to Midnight	5:00 P.M. Tuesday

	ARRESTED	MUST BE ARRAIGNED BY
FRIDAY:	Before 5:00 P.M.	5:00 P.M. Tuesday
	5:01 P.M. to Midnight	5:00 P.M. Wednesday
SATURDAY:	Any time	5:00 P.M. Wednesday

NOTE: If a legal holiday (a day when the courts are closed) occurs on the day of arrest, the day of arraignment, or on any day in between, the arraignment may be postponed one (1) additional day.

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Date 3/22/89
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* * *

(Exhibit 102 Omitted)

* * *

Exhibit 103

DECLARATION

The Honorable Ronald L. Taylor, Judge, declares and says:

I am the presiding Judge of the Municipal Court of the State of California, Riverside Judicial District, located at 3547 10th Street, Riverside, California.

Each day, excluding Saturdays, Sundays, and holidays, arraignments, both misdemeanor and felony, are conducted for those persons in custody in the County of Riverside Jail, Riverside, California, via a video camera.

The misdemeanor in-custody arraignments are conducted at 10:30 a.m. by the Honorable Becky Dugan, Court Commissioner, presiding in Division 25 of the Municipal Court.

The felony in-custody arraignments are conducted at 1:30 p.m. by the Honorable J. Thompson Hanks, Judge, presiding in Division 24 of the Municipal Court.

Prior to arraignment, those persons in custody being arraigned via the video camera system are shown a video tape statement of their legal and constitutional rights. The video tape which they are shown is an advisement of rights by the Court. Attached hereto, marked Exhibit "A", is a transcript of the advisement of rights given to those persons charged with a misdemeanor. Attached hereto, marked Exhibit "B", is a transcript of the advisement of rights given to those persons charged with a felony.

During the arraignment, the person being arraigned is able to communicate verbally with the Court. Present with the defendant during a felony arraignment is a Deputy Public Defender. The person being arraigned is able to communicate verbally with the Deputy Public Defender.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of April, 1989, at the City of Riverside, California.

/s/ Ronald Taylor
The Honorable Ronald L. Taylor Judge of the Municipal Court

EXHIBIT A

I am going to advise you of your constitutional rights that apply to every misdemeanor case. These rights will be explained to you by your attorney if you request it but I'm going to do that now so it will save time for you when the judge actually does approach you and ask you for your plea.

In each misdemeanor case you have the following constitutional rights, which include the right to an attorney. If you request an attorney and cannot afford one, the court will appoint one to represent you; however, if you can afford it you may be required to pay for partial costs of your attorney's fees. The hearing will be held at the end

of your case to determine whether or not you can afford to pay for any of these fees.

You also have the right to a continuance of this proceeding to enter your plea. You have the right to a continuance of not more than seven days for the purpose of entering your plea. ___ for that purpose you need to request that of the judge.

You also have the right to a reasonable bail to be set in your case.

You also have the right if you enter a not guilty plea to have your trial within 30 days of today's hearing if you are in custody. You have the right to have that trial by jury. If you waive your right to a trial by jury then you will have a trial by a judge sitting without a jury.

You also have the right to confront and cross-examine any witnesses that may appear against you, which means that you have the right to be in court with them and to see them and to listen to their testimony, as well as have your attorney ask them any questions that you would like.

You have the right also not to incriminate yourself, which means that you do not have to provide any evidence against your self or your case, nor do you have to provide any testimony.

You further have the right if you are convicted or plead guilty to be sentenced within a reasonable time, which means that you cannot be sentenced unless six hours have elapsed and it cannot go farther than five days unless you give up the right to the six-hour delay and then you can be sentenced right away after you enter

your plea of guilty if that's what you wish to do. If you wish to enter a plea of nolo contendre [sic] or no contest it will have the same effect as if you entered a guilty plea for the purposes of this criminal hearing. However, the difference is that it cannot be used against you in any civil proceeding or civil lawsuit.

If you are charged with a misdemeanor your sentence can range anywhere from probationary period with no time in custody and no fine all the way up to a probationary period, a fine of $1,000, and no more than 12 months in the county jail.

Further, if you're not a citizen of the United States and you enter a plea of guilty or if you are convicted, the possibility is that you could be deported or excluded from the United States if you leave and wish to come back, or you could be denied naturalization rights.

Further, you have the right to have a hearing to determine whether there was probable cause for your arrest, if you request one at the time of this hearing. If you have any other questions about your rights you should ask your attorney when you appear in court and discuss your matter with your attorney.

EXHIBIT B

Because you were charged with a felony, you have the following constitutional rights:

You have the right to a preliminary hearing within ten court days of today. If the court finds at that preliminary

hearing that there is probable cause to hold you to answer to the Superior Court, you have the right to a speedy and public trial by jury or by court within sixty days of your arraignment in the Superior Court. At both your preliminary hearing and your jury trial, you have the right to cross-examine and confront the witnesses against you, to offer evidence in your behalf, and to use the court's subpoena power to bring any witnesses to court on your behalf. You also have a right at both proceedings to refuse to testify, or, if you wish, to testify. At all stages of the proceedings in felony matters you have the right to the representation of a lawyer. If you cannot afford a lawyer the court will appoint you one. You also have the right to have reasonable bail set for you. Finally, you have a right to have a hearing to determine whether there was probable cause for your arrest within a reasonable time, at your request.

proceedings to refuse to testify, or, if you wish, to testify. At all stages of the proceedings in felony matters you have the right to the representation of a lawyer. If you cannot afford a lawyer the court will appoint you one. You also have the right to have reasonable bail set for you. Finally, you have a right to have a hearing to determine whether there was probable cause for your arrest within a reasonable time, at your request.

Exhibit 105

Declaration of Riverside County Sheriff's Department – Banning Station Report Review

I, Charlotte A. Boytor, as Commander of the Riverside Sheriff's Department Banning Station, am personally aware of the arrest report review for the Banning Station and if requested to testify reference the procedure, would do so.

All reports dealing with the arrest of a person and/or persons are considered as RUSH reports, and treated as such within the Banning Station of the Riverside Sheriff's Department. After the Deputy has made an arrest his report is submitted for review. The reports are reviewed on a daily basis by the Watch Commander. In the case of the Banning Station, the Watch Commander is a Sergeant, and in most instances there is a Sergeant on duty twenty-four hours a day.

The reviewing Sergeant checks the report for proper charges, elements of the crime charged, and probable cause for the arrest, among other things. The reviewing Sergeant must be satisfied that sufficient probable cause for the arrest exists before he will initial said report and forward it for further processing. If the reviewing Sergeant is not satisfied with the probable cause for arrest as articulated by the arresting Deputy, he will immediately contact the arresting Deputy for additional information and or reports. If the reviewing Sergeant is not satisfied with the arresting Deputy's explanation and/or additional information; the reviewing Sergeant will direct the arresting Deputy to have the person arrested released pursuant to 849(b)(1) Penal Code. Should the arresting

Deputy not be available to do so, the reviewing Sergeant will personally have the arrested person released pursuant to 849(b)(1) Penal Code, as being the superior officer.

While release pursuant to the above circumstances have been rare within the Banning Station, it has occurred; and I can personally state that it has been done, although, I cannot recall specific cases at this time.

I declare under the penalty of perjury that the foregoing is true and correct and this Declaration was executed at Banning, California on March 29, 1989.

/s/ Charlotte A. Boytor
Captain Charlotte A. Boytor

Commander Riverside
Sheriff's Department

Banning Station

Declaration of Robert Daniel Spain

I, Robert Daniel Spain, do hereby declare as follows:

1. That I am personally aware of the facts given in this Declaration and if requested to testify I would do so;

2. That I am a Captain and Commander of the Hemet Station of the Riverside County Sheriff's Department, in the County of Riverside, State of California.

3. That it is the practice of this Department, as prescribed by P.O.S.T. and other recognized police practice organizations within the State of California; the following booking procedures.

a) After an arrest is made, and after booking of the suspect at the County Jail facility; all arrest reports are reviewed by the Watch Commander.

b) The Watch Commander's review of these documents is to review for possible writing errors as well as to check the charging violation.

c) The Watch Commander, before he approves the reports, must be satisfied that the facts surrounding the arrest must fit the appropriate Penal Code violation.

d) Further, the Watch Commander must be satisfied that probable cause exists for the arrest. If he believes that further facts are needed to confirm probable cause, he will further question the arresting officer to determine if a supplemental report is required.

e.[sic] If however, after there is further inquiry of the arresting officer, there is no basis for the arrest, i.e., no crime or Penal Code violation, he will instruct the arrestee be immediately released.

4. Although release of prisoners for lack of probable cause does not occur often, a small percentage of arrestees are released in this manner.

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed at Hemet, California on March 16th, 1989.

/s/ Robert D. Spain

Declaration Of Susan J. Hansen

I, Susan J. Hansen, do hereby declare as follows:

1. That I am personally aware of the facts given in this Declaration and if requested to testify I would do so;

2. That I am Captain and Commander of the Riverside Patrol and Investigation Bureau of the Riverside Sheriff's Department, in the County of Riverside, State of California.

3. That it is the practice of this Department, as prescribed by P.O.S.T. and other recognized police practice organizations within the State of California; the following booking procedures.

   a) After an arrest is made, and after booking of the suspect at the Riverside County Jail facility; all arrest reports are reviewed by the Watch Commander.

   b) The Watch Commander review of these documents is to review for possible writing errors as well as to check the charging violation.

   c) The Watch Commander, before he approves the report, must be satisfied that the facts surrounding the arrest must fit the appropriate Penal Code violation.

   d) Further, the Watch Commander must be satisfied that probable cause exists for the arrest. If he believes that further facts are needed to confirm probable cause, he will further question the arresting officer to determine if a supplemental report is required.

   e) If, however, after there is further inquiry of the arresting officer, there is no basis for the arrest, i.e. no crime or Penal Code violation, he will instruct the arrestee be immediately released.

4. Although release of prisoners for lack of probable cause does not occur often, a small percentage of arrestees are released in this manner.

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed at Riverside, California on March 24, 1989.

/s/ Susan J. Hansen

DECLARATION OF CAPTAIN MICHAEL R. LEWIS

I, Michael R. Lewis, do hereby declare as follows:

1. That I am personally aware of the facts given in this Declaration and if requested to testify I would do so;

2. That I am the Station Commander of the Riverside County Sheriff's Indio Station in the City of Indio, in the County of Riverside, State of California.

3. That it is the practice of this Sheriff's Station to follow, as prescribed by the Commission on Peace Officers Standards and Training (P.O.S.T.) and other recognized police practice organizations within the State of California, the following booking procedures.

   a. After an arrest has been made and the suspect has been booked at the Riverside County Jail in the City of Indio, all arrest reports are reviewed by an Investigator. The primary and almost exclusive function of this Investigator is the review and processing of arrest reports and maintaining a positive liaison with the District Attorney's Office. He has been trained in report writing structure and procedures.

   b. The Investigator reviews these documents for possible writing errors, as well as to confirm proper violations have been charged.

   c. The Investigator, before he approves reports, must be satisfied the facts surrounding the arrest fit the appropriate code violation as charged.

   d. Further, the Investigator must be satisfied that probable cause existed for the arrest. If he believes additional facts are needed to confirm probable cause, he will further question the arresting officer to determine if a supplemental report or a re-write of the original report is needed.

   e. If, after further inquiry of the arresting officer, he determines there is no basis for the arrest, i.e. no crime or code violation, he insures the arrestee is immediately released from custody.

4. Although release of prisoners for lack of probable cause does not occur often, a small percentage of arrestees are released in this manner.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed in Indio, California, on March 15, 1989.

/s/ Michael R. Lewis
Michael R. Lewis

DRAFT

Declaration of Dennis Froemming

I, Dennis Froemming, do hereby declare as follows:

1. That I am personally aware of the facts given in this Declaration and if requested to testify I would do so;

2. That I am a Captain with the Riverside County Sheriff's Department, in the County of Riverside, State of California.

3. That the following booking procedures are practiced by this Department, as prescribed by P.O.S.T. and

other recognized police agencies within the State of California;

a. After an arrest is made, and after booking of the suspect at the County Jail, all arrest reports are reviewed by the Watch Commander.

b. The Watch Commander's review of these documents is to review for possible writing errors as well as to check the charging violation.

c. The Watch Commander, before he approves the reports, must be satisfied that the facts surrounding the arrest must fit the appropriate Penal Code violation.

d. Further, the Watch Commander must be satisfied that probable cause exists for the arrest. If he believes that further facts are needed to confirm probable cause, he will further question the arresting officer to determine if a supplemental report is required.

e. If, however, after there is further inquiry of the arresting officer, there is no basis for the arrest, i.e. no crime or Penal Code violation, he will instruct the arrestee be immediately released.

4. Although release of prisoners for lack of probable cause does not occur often, a small percentage of arrestees are released in this manner.

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed by Blythe, California, on March 17, 1989.

/s/ Dennis Froemming

DECLARATION OF KENNETH N. GOLDEN

I, Kenneth N. Golden, do hereby declare as follows:

A. That I have personally prepared this declaration, which is based upon professional and factual information, pertaining to the arrest and report review procedures existing at the Moreno Valley Police Department, a Riverside County Sheriff's contract, and therefore would testify, if requested to do so, to the following;

B. That I am a Riverside County Sheriff's Captain who performs as the Station Commander for the City of Moreno Valley in the County of Riverside, State of California, by authority vested in a contractual agreement between the City of Moreno Valley and the Sheriff's Department of the County of Riverside which provides comprehensive law enforcement services to the City of Moreno Valley.

C. That the staff employed by Riverside County Sheriff's Department assigned to the "Moreno Valley Police Department" follow the below listed arrest, booking, and report procedure as prescribed by Peace Officers Standards and Training, Sheriff's Department Policy and other governing factors that are recognized police practices within the State of California;

1. All officers who employe [sic] arrest powers are graduates of a California P.O.S.T. certified basic peace officer's academy and the Riverside County Sheriff's Department Field Training Officer Program.

2. Each officer is in compliance with P.O.S.T. advance officer training schedules.

3. After a Moreno Valley Police Officer (Deputy Sheriff) arrests an offender for a violation and subsequently elects to book the person into the Riverside County Jail the arrest report is

reviewed by a shift supervisor who is minimally a Sheriff's Sergeant.

4. The supervisor, while reviewing the arrest reports, focuses on several factors to ensure the quality of the investigation and documentation thereof.

5. Prior to final approval of the written report, the reviewing supervisor establishes in his/her mind, from facts articulated in the report, that the elements of the offense that caused the person(s) to be arrested and booked were present prior to the arrest and documented accordingly in the report.

6. If the supervisor determines that probable cause for the arrest or elements of the crime were not present at the time of arrest, or may have been omitted from the report, the report will not be approved without further investigation.

7. When probable cause for the arrest or elements of the crime are in question, the supervisor reviewing the report will contact the arresting officer to clarify any questions related to probable cause or missing elements of a crime that resulted in the arrest.

8. In the event the required information did exist and was erroneously omitted, the supervisor and arresting officer will determine if a supplemental report is in order to satisfy the questions related to probable cause and/or elements of the crime that resulted in the arrest.

9. In the event further discussion between the arresting officer and supervisor reveals that probable cause or elements of the crime were insufficient to warrant the arrest, the arrestee will be immediately released from custody in accordance with appropriate Section(s) of the California Penal code.

D. The frequency of occurrence related to prisoners being released from custody due to a lack of probable cause or a lack of corpus delicti noted in arrest reports by supervisors is very low, however, when warranted, it does occur.

I, Kenneth N. Golden, declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed at Moreno Valley Police Department, 23618 Sunnymead Blvd., Moreno Valley, California, on March 16, 1989.

/s/ Kenneth N. Golden
Kenneth N. Golden, Captain
Riverside County Sheriff

DECLARATION OF William D. Reynolds

I, William Reynolds, do hereby declare as follows:

1. That I am personally aware of the facts given in this Declaration and if requested to testify I would do so.

2. That I am a Riverside County Sheriff's Captain and Commander of the Sheriff's Station in the City of Lake Elsinore in the County of Riverside, State of California. I further serve as the Chief of Police for the City of Lake Elsinore. Lake Elsinore contracts with the Sheriff's Department for city law enforcement.

3. That it is the practice of this Department, as prescribed by P.O.S.T. and other recognized police practice organizations within the State of California; the following booking procedures.

a) After an arrest is made, and after booking of the subject at the City Police Station, or nearest County Jail facility; all arrest reports are reviewed by the Watch Commander.

b) The Watch Commander review of these documents is to review for possible writing errors as well as to check the charging violation.

c) The Watch Commander, before he approves the reports, must be satisfied that the facts surrounding the arrest must fit the appropriate Penal Code violation.

d) Further, the Watch Commander must be satisfied that probable cause exists for the arrest. If he believes that further facts are needed to confirm probable cause, he will further question the arresting officer to determine if a supplemental report is required.

e) If, however, after there is further inquiry of the arresting officer, there is no basis for the arrest, i.e., no crime or Penal Code violation, he will instruct the arrestee be immediately released.

4. Although release of prisoners for lack of probable cause does not occur often, a small percentage of arrestees are released in this manner.

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed at Lake Elsinore, California on March 15, 1989.

/s/ William D. Reynolds

DECLARATION OF L. L. RICHARDSON

I, L. L. Richardson, do hereby declare as follows:

1. That I am personally aware of the facts given in this Declaration, and if requested to testify, I would do so:
2. That I am the Chief of Police of the City of Riverside, in the County of Riverside, State of California.
3. That the following occurred [sic] after a subject is arrested, and booked by an Officer of this Police Agency.
   a) After an arrest is made, and after booking of the suspect at the nearest County jail facility; all arrest reports are reviewed by a Supervisor.
   b) The Supervisors [sic] review of these documents is to screen for possible writing errors as well as to check the charging violation.
   c) The Supervisor, before he/she approves the reports, must be satisfied that the facts surrounding the arrest must fit the appropriate Penal Code violation.
   d) Further, the Supervisor must be satisfied that probable cause exists for the arrest. If he/she believes that further facts are needed to confirm probable cause, he/she will further question the arresting officer to determine if a supplemental report is required.
   e) If, however, after there is further inquiry of the arresting officer, there is no basis for the arrest, i.e. no crime or Penal Code violation, he/she will insure that the arrestee be immediately released.
4. Although release of prisoners for lack of probable cause does not occur often, a small percentage of arrestees are released in this manner.

I declare under the penalty of perjury that the foregoing is true and correct and this Declaration was executed at Riverside, California on March 27, 1989.

/s/ L L Richardson
L. L. Richardson, Chief of Police

Declaration Of Joel E. Patton

I, Joel E. Patton, do hereby declare as follows:

1. That I am personally aware of the facts given in the Declaration and if requested to testify I would do so;

2. That I am the Chief of Police of the City of Perris, in the County of Riverside, State of California.

3. That it is the practice of this Department, as prescribed by P.O.S.T. and other recognized police organizations within the State of California; and following booking procedures.

   a) After an arrest is made, and after booking of the suspect at the City Police Station, or nearest County Jail facility; all arrests reports are reviewed by the Watch Commander.

   b) The Watch Commander review of these documents is to review for possible writing errors as well as to check the charging violation.

   c) The Watch Commander, before he approves the reports, must be satisfied that the facts surrounding the arrest must fit the appropriate Penal Code violation.

   d) Further, the Watch Commander must be satisfied that probable cause exists for the arrest. If he believes that further facts are needed to confirm probable cause, he will further question the arresting officer to determine if a supplemental report is required.

   e) If, however, after there is further inquiry of the arresting officer, there is no basis for the arrest,

i.e. no crime or Penal Code violation, he will instruct the arrestee be immediately released.

4. Although release of prisoners for lack of probable cause does not occur often, a small percentage of arrestees are released in this manner.

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed at Perris California on March 27, 1989.

/s/ Joel E. Patton

DECLARATION OF CHIEF JOHN H. CLEGHORN

I, John H. Cleghorn, do hereby declare the following:

1. I am the Chief of Police for the City of Corona in the County of Riverside, State of California.

2. It is the practice of the Corona Police Department to follow P.O.S.T. guidelines and those recognized by departments throughout the state of California, the following booking procedures:

   a) After the arrest and booking of a suspect at the Corona Police facility or nearest county jail facility, all arrest reports are reviewed by a supervisor.

   b) The supervisor reviews these reports for possible writing errors as well as to check the charging violation(s).

   c) Before the supervisor approves the report, he must be satisfied that the facts surrounding the arrest fit the appropriate violation of the law.

   d) The supervisor must be satisfied that probable cause exists for the arrest. If he believes that

further information is needed to confirm probable cause, he will question the arresting officer to determine if a supplemental report is necessary.

e) If, after the supervisor questions the arresting officer and it is determined that the basis for the arrest is solely on probable cause that does not exist, he will instruct the officer to immediately release the arrestee.

3. Although prisoners are seldom released for lack of probable cause, it occasionally occurs and a small percentage of arrestees are released as a result.

4. I am personally aware of the facts given in this declaration and if requested to testify, I would do so.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS DECLARATION WAS EXECUTED AT CORONA, CALIFORNIA ON MARCH 24, 1989.

/s/ John H. Cleghorn
John H. Cleghorn
Chief of Police

JHC:TS:db

Declaration Of Jerry N. Graves

I, Jerry N. Graves, do hereby declare as follows:

1. That I am personally aware of the facts given in this Declaration and if requested to testify I would do so;

2. That I am the Chief of Police of the City of Indio, in the County of Riverside, State of California.

3. That it is the practice of this Department, as supported by P.O.S.T. Training and other commonly recognized police practice organizations within the State of California; the following booking procedures.

a) After an arrest is made, and after booking of the subject at the Indio County Jail Facility, all arrest reports are reviewed by the Watch Commander.

b) The Watch Commander reviews these documents for grammatical errors and sufficiency of information concerning any charging violations.

c) The Watch Commander, before he approves these reports, must be satisfied that the report sets forth sufficient facts and information surrounding the arrest to fit the appropriate law violation.

d) Further, Indio Police Officers who arrest and book any person are required to complete all reports concerning the booking prior to securing from duty.

e) Further, upon report review, the Watch Commander must be satisfied that probable cause exists for the arrest and booking. If he believes that further facts or information are necessary to confirm probable cause, he will further question the arresting officer to determine if a supplemental report is required.

f) If, however, after such further inquiry of the arresting officer(s), there is no basis for the arrest/booking (e.g. lacks proveable [sic] elements of crime or violation), he will instruct that the arrestee be immediately released from custody.

4. Although release of prisoners for lack of probable cause does not occur often, a small percentage of arrestees are released in this manner.

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed at Indio, California on March 16, 1989.

/s/ Jerry N. Graves
JERRY N. GRAVES
CHIEF OF POLICE
CITY OF INDIO

DECLARATION OF HEMET POLICE DEPARTMENT

I, Jerry D. Putman, do hereby declare as follows:

1. That I am personally aware of the facts given in this Declaration and if requested to testify I would do so;

2. That I am the Chief of Police of the City of Hemet, in the County of Riverside, State of California.

3. That it is the practice of this Department, as prescribed by P.O.S.T. and other recognized police practice organizations within the State of California; the following booking procedures.

   a) After an arrest is made, and after booking of the suspect at the City Police Station, or nearest County Jail facility; all arrest reports are reviewed by the Watch Commander.

   b) The Watch Commander review of these documents is to review for possible writing errors as well as to check the charging violation.

   c) The Watch Commander, before he approves the reports, must be satisfied that the facts surrounding the arrest must fit the appropriate Penal Code violation.

   d) Further, the Watch Commander must be satisfied that probable cause exists for the arrest. If he believes that further facts are needed to confirm probable cause, he will further question the arresting officer to determine if a supplemental report is required.

   e) If, however, after there is further inquiry of the arresting officer, there is no basis for the arrest i.e., no crime or Penal Code violation, he will instruct the arrestee be immediately released.

4. Although release of prisoners for lack of probable cause does not occur often, a small percentage of arrestees are released in this manner.

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed at Hemet, California on March 14, 1989.

/s/ Jerry D. Putman

Declaration of Frank Robles, Chief of Police.

I, Frank Robles, do hereby declare as follows:

1. That I am personally aware of the facts given in this Declaration and will testify to said facts if requested to do so;

2. That I am the Chief of Police of the City of Desert Hot Springs, in the County of Riverside, state of California.

3. That it is the normal practice of this department, as prescribed by P.O.S.T. and other law enforcement organizations within the state of California, the following booking procedures:

a) After an arrest is made, and after booking the suspect at the nearest county jail facility, all arrest reports are reviewed by the watch commander or the investigations sergeant.

b) The person reviewing the reports will check then [sic] for possible writing errors.

c) The person reviewing the reports must be satisfied that the facts surrounding the arrest fit the Penal Code Section cited on the arrest report before giving final approval.

d) The person reviewing the report must be satisfied that probable cause existed at the time the arrest was made. If not, he will either question the arresting officer and or direct him to supplement the arrest report to further clarify the arrest.

e) If, after further questioning or report review, the reviewer determines there was no basis for the arrest, i.e., no crime or no prosecution desired, he will instruct the booking facility to immediately release the arrestee.

f) although release of prisoners because of a lack of probable cause for arrest does not occur often, a small number of arrestees are subsequently released in this manner.

I declare under the penalty of perjury that the forgoing is true and correct and that this Declaration was executed at Desert Hot Springs, California on March 27, 1989.

/s/ Frank Robles
FRANK ROBLES
Chief of Police

DECLARATION OF THOMAS C. KENDRA

I, THOMAS C. KENDRA, do hereby declare as follows:

1. That, I am the chief of Police in the City of Palm Springs, Riverside County, State of California;

2. That, I am personally aware of the background leading up to probable cause hearing and the facts given in this declaration and if requested to testify I would do so;

3. That, it is the policy and practice of the Palm Springs Police Department as prescribed by P.O.S.T., and other recognized police organizations within the State of California; the following booking procedures:

   a. After an arrest is made and after booking of the prisoner brought to the Police station, the Watch Commander then reviews the arrest reports. The Palm Springs Police Department booking slip is in fact a probable cause statement and contains the elements of the crime and a short scenario of the arrest.

   b. The Watch Commander (Sergeant or Lieutenant) reviews the pre-booking slips and the arrest reports checking for possible writing errors as well as to check the charging violation.

   c. The Watch Commander, before he approves a report, must be satisfied that the facts surrounding the arrest fit the appropriate Penal Code violation.

   d. The Watch Commander must be satisfied that probable cause exists for the arrest. If he believes that further facts are needed to confirm probable cause, he will question the arresting officer to determine if a supplemental report is required.

   e. If, however, after there is further inquiry of the arresting officer, there is no basis for the arrest, i.e. no crime of [sic] Penal Code violation, then he

will instruct the arrestee be immediately released. (See release form)

4. Although release of prisoners for lack of probable cause does not occur *often* a small percentage of arrestees are released in this manner.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Palm Springs, California, on March ___, 1989.

/s/ Thomas C. Kendra
THOMAS C. KENDRA
Chief of Police
Palm Springs Police Department

PALM SPRINGS POLICE DEPARTMENT
GENERAL ORDER

FROM: Office of the Chief of Police

TO: All Personnel

NUMBER: 89-10

SUBJECT: CERTIFICATE OF RELEASE

DATE: March 13, 1989

Policy: Effective immediately, a revised 1989 Palm Springs Police Department *Certificate of Release* form shall be issued in compliance with Sections 851.6(a) and (b) P.C.

Release reasons will be determined by the following guidelines:

A. 825 P.C. Arrestee not arraigned within two days.

B. 849(b)(1) P.C. The arresting officer, a supervisor or the investigator assigned the case determines that there are insufficient grounds for making a criminal complaint.

C. 849(b)(2) P.C. Arrested for intoxication only, no further proceedings desirable.

D. 849.5 P.C. No charges filed – D.A. reject.

It shall be the responsibility of the *releasing officer*, the *releasing officer's supervisor* or the *assigned investigator*, to complete the *Certificate of Release* form, make two copies and issue the original to the subject being released. The copies should be attached to the booking slip and routed to the Warrant Clerk. The Warrant Clerk will send one copy to the Department of Justice and cause one copy to be placed into the Palm Springs Arrest file. In cases in which the arrestee is charged with 647(f) P.C. – Alcohol and released 849(b)(2) P.C., make one copy only which will stay with the booking slip.

/s/ Thomas C. Kendra
THOMAS C. KENDRA
Chief of Police
TCK:jm

PALM SPRINGS POLICE DEPARTMENT
CERTIFICATE OF RELEASE

Penal Code Section 849.5 provides:

In any case in which a person is arrested and released and no accusatory pleading is filed charging him/her with an offense, any record of arrest of the person shall include a record of release. Thereafter, the arrest shall not be deemed an arrest but a detention only.

_____ _____
(Name) (D.O.B.)

Was arrested on _____ by the Palm Springs Police Department

Was released on _____ by the Palm Springs Police Department

No accusatory pleading has been filed. Therefore, this arrest shall not be deemed an arrest, but a *DETENTION ONLY*.

RELEASE REASON

Check One:

( ) 825 P.C. (Not arraigned within two days).

( ) 849(b)(1) P.C. (Insufficient grounds for making criminal complaint).

( ) 849(b)(2) P.C. (Alcohol intoxication only).

( ) 849.5 P.C. (No charges filed)

SIGNED: _____

TITLE: _____

Check One: Releasing Officer ( ) Releasing Officer Supervisor ( )

Revised 1989

I, Ronald A. Johnson do hereby affirm and declare that the following facts are true and correct;

1. I am personally aware of all stated facts within this declaration and will testify to the same if required;

2. I, Ronald A. Johnson, am Chief of Police for the City of Cathedral City, County of Riverside, State of California.

3. The Cathedral City Police Department subscribes to the practices of P.O.S.T. and other recognized policing organizations within the State of California.

4. The Cathedral City Police Department follows the following booking procedures of an arrestee.

   a. Upon the arrest of a person by the Cathedral City Police Department, that person is transported to the Cathedral City Police Station or the Indio County Jail facility. All reports pertaining to that arrest are forwarded to the on duty Watch Commander for approval of said arrest.

   b. It is the Watch Commander's duty to review all documents pertaining to the arrest for possible discrepancies in report writing and to ascertain that probable cause and the elements of the crime have been met.

   c. If the Watch Commander was to ascertain a discrepancy in the probable cause for the arrest, he would ascertain from the arresting officer, further information and determine if, in fact a supplemental report relating that information is required.

   d. If upon further inquiry by the Watch Commander it is determined that no basis for an arrest was present, he would immediately order the arrestee be released from custody.

5. This type of release for lack of probable cause very seldom occurs and this very small percentage is released pursuant to the California Penal Code.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed

at the Cathedral City Police Department, Cathedral City, California on March the 15th, 1989.

/s/ Ronald A. Johnson
Ronald A. Johnson, Chief of Police

DECLARATION OF JOSEPH M. KOZMA

I, Joseph M. Kozma, do hereby declare as follows:

1. That I am personally aware of the facts given in this Declaration and if requested to testify, I would do so;

2. That I am the Chief of Police of the City of San Jacinto in the County of Riverside, State of California.

3. That it is the practice of this Department, as prescribed by The P.O.S.T. Commission and other recognized police organizations within the State of California; that the following booking procedures are adhered to:

   a) Upon arrest and booking of a suspect at the City Police Station, or nearest County Jail facility; within 24 hours, all arrest reports are reviewed by a supervisor.

   b) The supervisor's review of all documents is to ensure correction of grammar, elements of the crime existed, and proper charges filed.

   c) The supervisor, before he approves the reports, must further be satisfied that the facts surrounding the arrest fit the appropriate Penal Code violation.

   d) The supervisor must be satisfied that "PROBABLE CAUSE" exists for the arrest. If he believes that further facts are needed to confirm probable

cause, he will further question the arresting officer to determine if a supplemental report is required.

   e) If after further inquiry of the arresting officer, there is no basis for the arrest, i.e., lack of "probable cause" or no crime was committed, he will instruct that the arrestee be immediately released.

4. Although release of prisoners for lack of "probable cause" does not occur often, a small percentage of arrestees are released in this manner.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed at San Jacinto, California, on March 15, 1989.

/s/ Joseph M. Kozma
Joseph M. Kozma, Chief of Police
Joseph M. Kozma, Chief of Police

DECLARATION OF VERIFICATION OF PROBABLE CAUSE ON ALL ARRESTS

I, Robert K. Feemster, do hereby declare the following:

1. That I am personally aware of the facts given in this Declaration and if requested to testify I would do so;

2. That I am the Chief of Police of the City of Blythe, in the County of Riverside, State of California.

3. That it is the practice of the Blythe Police Department, as prescribed by P.O.S.T. and other recognized Police practice organizations with the State of California; the following booking procedures;

   a) After an arrest is made, and after booking the suspect at the nearest County Jail facility; all

arrest reports are reviewed by the Watch Commander, Sergeant, or other Supervisory Officer with the Blythe Police Department.

b) The Watch Commander or other Supervisory Officer reviews these arrest and related reports for writing errors as well as to verify there is probably [sic] cause to charge the arrested person with the crime(s) he/she is in custody for.

c) The Watch Commander or other Supervisory Officer, before he/she approves the reports, must be satisfied that the facts surrounding the arrest must fit the appropriate Statute Code Section the arrested person is charged with.

d) Further, the Watch Commander must be satisfied that probable cause exits for the arrest. If he believes that further facts are needed to confirm probable cause, he will further question the Arresting Officer to determine if a supplemental report is required.

e) If, however, after there is further inquiry of the Arresting officer, there is no basis for the arrest, i.e. no crime or Statutory Code violation, he will instruct the arrestee be immediately released.

4. Although release of prisoners for lack of probable cause does not occur often, a small percentage of arrestee's [sic] are released in this manner.

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed at Blythe, California on March 16, 1989.

/s/ Robert K. Feemster
Robert K. Feemster
Chief of Police

Declaration of In-Field Review

I, Arnold Jimenez, do hereby declare as follows:

1. That I am personally aware of the facts given in this Declaration and if requested to testify I would do so;

2. That I am Chief of Police of the City of Coachella, in the County of Riverside, State of California.

3. That it is the practice of this Department, as prescribed by P.O.S.T. and other recognized police practice organizations within the State of California; the following booking procedures.

   a) After an arrest is made, and after booking of the suspect at the City Police Station, or nearest County Jail facility; all arrest reports are reviewed by the Watch Commander.

   b) The Watch Commander review of these documents is to review for possible writing errors as well as to check the charging violation.

   c) The Watch Commander, before he approves the reports, must be satisfied that the facts surrounding the arrest must fit the appropriate Penal Code violation.

   d) Further, the Watch Commander must be satisfied that probable cause exists for the arrest. If he believes the further facts are needed to confirm probable cause, he will further question the arresting officer to determine if a supplemental report is required.

   e) If, however, after there is further inquiry of the arresting officer, there is no basis for the arrest, i.e. no crime or Penal Code violation, he will instruct the arrestee be immediately released.

4. Although release of prisoners for lack of probable cause does not occur often, a small percentage of arrestees are released in this manner.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed at Coachella, California on March 30, 1989.

/s/ Arnold Jimenez
Arnold Jimenez
Chief of Police
Coachella Police Department

Declaration of Banning Police Department Report Review.

I, Leroy Gren, do hereby declare as follows:

1. That I am personally aware of the facts given in this Declaration and if requested to testify I would do so;
2. That I am the Chief of Police of the City of Banning, in the County of Riverside, State of California.
3. That it is the practice of this Department, as prescribed by P.O.S.T. and other recognized police practice organizations within the State of California; the following booking procedures.
   a) After an arrest is made, and after booking of the suspect at the nearest County Jail facility; all arrest reports are reviewed by the Watch Commander.
   b) The Watch Commander review of these documents is to review for possible writing errors as well as to check the charging violation.
   c) The Watch Commander, before he approves the reports, must be satisfied that the facts surrounding the arrest must fit the appropriate Penal Code violation.
   d) Further, the Watch Commander must be satisfied that probable cause exists for the arrest. If he believes that further facts are needed to confirm probable cause, he will further question the arresting officer to determine if a supplemental report is required.
   e) If, however, after there is further inquiry of the arresting officer, there is no basis for the arrest, i.e. no crime or Penal Code violation, he will instruct the arrestee be immediately released.
4. Although release of prisoners for lack of probable cause does not occur often, a small percentage of arrestees are released in this manner.

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed at Banning, California on March 31, 1989.

/s/ Leroy E. Gren

Declaration of Captain S.H. Russell

I, S.H. Russell, do hereby declare as follows:

1. That I am personally aware of the facts given in this Declaration and if requested to testify I would do so.
2. That I am Area Commander of the Riverside Area Office of the California Highway Patrol (CHP), in the County of Riverside, State of California.
3. That it is the practice of our Area, as prescribed by P.O.S.T. and other recognized police organizations within the state of California to follow booking procedures as follows:
   A. When a suspect is arrested and incarceration is required or allowed, the suspect is booked at the Riverside County Main Jail. In each case an arrest report is submitted to and reviewed by the officer's immediate supervisor.

B. The immediate supervisor's responsibility is to review the arrest and the arrest documents to assure that there was sufficient probable cause for arrest and that the elements of each violation are clearly specified.

C. If the immediate supervisor questions the report, the officer is requested to immediately explain the specifics of the case. If the elements are present, but not specified in the report, the report is updated with all the facts.

D. If at any point in an investigation it is determined that the arrest lacked probable cause or that the elements against the suspect do not warrant prosecution, the suspect is immediately released pursuant to Section 849 PC with the concurrence of a supervisor. Seldom is it necessary that a subject be released from *jail* pursuant to Section 849 PC; however on occasion suspects are released *prior to booking* under 849 B1 PC due to low breath reading.

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed at Riverside City, California on March 23, 1989.

/s/ S H Russell
S.H. RUSSELL, Captain
Riverside Area CHP Commander

No. 89-1817

Supreme Court, U.S.
FILED
NOV 15 1990
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1990

COUNTY OF RIVERSIDE and COIS BYRD, SHERIFF OF RIVERSIDE COUNTY,

Petitioners,

v.

DONALD McLAUGHLIN, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX VOLUME II

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Petition For Certiorari Filed May 17, 1990
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November 9, 1989, Opinion of the United States Court of Appeals for the Ninth Circuit (Pet. for Cert., App. 1.)

EXHIBIT 106

DECLARATION OF LARRY SMITH

I, Larry D. Smith, hereby declare as follows:

1. That I am the Chief Deputy for the Riverside County Sheriff's Department. I am the Administrator of the Corrections Operation, and as such, I am responsible for operating the jail facilities in Riverside County.

2. On March 20, 1989, I visited the Orange County Main Jail in Santa Ana, California and observed several probable cause hearings. Each hearing took less than two minutes. The inmates would come into the room and sit before a Hearing Officer. The Hearing Officer would then tell the inmates the purpose of hearing. The Hearing Officer would then read a form apparently written by the arresting officer for purposes of determining whether probable cause exists for the arrest of that inmate. Attached hereto is a true and correct copy of the first sheet of a multi-colored form, issued in the hearing and marked as Exhibit "A".

3. During this process, the inmate does not speak nor is he asked or permitted questions.

4. Upon review of the form by the Hearing Officer, a determination of whether probable cause exists is made. The inmate is informed of the finding and leaves.

5. During my observations, I did not see any findings of "no" probable cause.

6. The facts stated in the form are nothing more than a recitation of who the arrestee is, that he committed

an offense, that alleged facts outlines the offense committed and that the facts are from personal knowledge or observations made by the arresting officer.

7. The above reporting procedure is virtually a summary of that information contained in a crime report, required to be written by all arresting officers throughout the State of California.

8. I reviewed a statistical report of all probable cause hearings for 1987 and 1988 written by Robert L. Upson, Judicial Hearing Officer for Orange County. A true and correct copy is attached hereto and marked as Exhibit "B".

9. The total average for the past two years for a "no probable cause" finding was 8.8%. However, after reviewing statistical records provided for by the Hearing Officer, I was able to determine that the true percentage of a "no probable cause" finding that resulted in the release of an inmate was approximately 2% less than the 8.8% average. This is a result of two factors not reflected in Exhibit "B". First, some inmates are released O.R. (Own Recognizance) prior to receiving an actual hearing – although the Hearing Officer would find "no probable cause" strictly on the report. Further, in some instances, when "no probable cause" was determined, a supplemental police report would be submitted, establishing probable cause. This is reflected by merely looking to the name of an inmate where "no probable cause" was determined and then looking to the next day, you would find the very same inmates name and a "probable cause" finding was then made.

10. In March, 1989, at my direction a random survey was conducted at the Riverside Jail tracking all bookings for 72 hours between 0001 hours, Sunday, March 19, 1989 through 2400 hours, Tuesday, March 21, 1989. A copy of the survey is attached hereto and marked as Exhibit "C".

11. The survey is broken down into ten categories. The first category, "Booking Number", denotes the booking number of every arrestee, starting with H090559 on page 1 and ending with H117398 on page 23. A total of 228 prisoners were booked during this survey.

12. The second category, "Arrest Date-Time", denotes the date and time the prisoner was arrested into the jail. The third category, "Booking Date-Time", denotes the date and time the prisoner was booked into the jail.

13. The fourth category, "All Charges – Arrest and Added Arresting Agency", represents the violation the prisoner was arrested for and the agency that made the arrest. For example, "PC" is abbreviated for the California Penal Code. And "VC" represents a violation of the California Vehicle Code, etc. "F" and "M" represents whether the charge(s) are felony or misdemeanor.

14. The fifth category, "Nature of Incarceration", represents the type of arrest – i.e. whether by a warrant ("Warrant"), without a warrant ("On Sight"), private citizen arrest ("Citizen"), court order ("Court Commit").

15. The sixth category, "Holds", represents whether there are any outstanding arrest warrants by some other county or city agency within the State of California. "Local" represents that there is an outstanding arrest

warrant by some other agency within the State of California. "State" represents that there is a State of California issued parole violation outstanding. "Fed" represents that there is a request by a Federal Government agency requesting a hold.

16. The seventh category, "First Court Appearance", represents the date a prisoner was first brought before the court with the time normally being 9:00 a.m. This is the arraignment stage. The eighth category, "Release Date-Time", represents the date and time the prisoner is released from custody.

17. The ninth category, "Release Authority", represents the authority authorizing release of the prisoner. "Bail Bond" represents that the prisoner made bail and was released. "853.6 PC" and "853.9 PC" represents the authority for release pursuant to California Penal Code §§ 853.6 and 853.9. "OR" represents own recognizance release. "5th Post Judge Order" represents the fifth order by the Riverside Superior Court, State of California, *In Re Inmates v. Sheriff of Riverside County*, case number 169226, authorizing certain types of court releases in light of overcrowded conditions. "825 PC" represents the releasee [sic] authority pursuant to *California Penal Code* § 825.

18. The eleventh category "Comments" represents comment that may further explain a particular situation.

19. Further, attached and marked as Exhibit "D", is a breakdown sheet of the survey. This breakdown sheet outlines the number of misdemeanor and felony arrests, the number of non-warrant bookings, the prisoner release time and any reasons for prisoners in custody after arraignment.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5th day of April, 1989 at Riverside, California.

/s/ Larry D. Smith
Larry D. Smith

EXHIBIT A

Received by JO

CRIME SUMMARY INFORMATION

PROBABLE CAUSE DECLARATION

BAIL SETTING INFORMATION

BOOKING NO.

ARRESTEE (LAST, FIRST, MIDDLE) DOB

ADDRESS (RESIDENCE)

BOOKING CHARGES SUPPL HOLDS

DATE/TIME OF ARREST 36-HR EXP. DATE/TIME

ARRESTING AGENCY ARRESTING OFFICER(S)

FACTS ESTABLISHING ELEMENTS AND IDENTIFICATION OF DEFENDANT:

[ ] SEE ATTACHED REPORTS, INCORPORATED HEREIN BY THIS REFERENCE.

[1] WEAPON DESCRIPTION: _____
[2] VICTIM'S AGE: _____ VICTIM'S INJURIES: _____
[3] VALUE OF PROP. LOSS: $ ___ TYPE OF PROP: ___
[4] TYPE OF NARCOTICS: _____ QTY: _____
[5] WHOLESALE VALUE: $___ STREET VALUE: $ ___

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY INFORMATION AND BELIEF.

EXECUTED ON _____
(DATE)

AT ORANGE COUNTY, CALIFORNIA,
BY _____
(SIGNATURE)

ON THE BASIS OF [ ] THE OFFICER'S DECLARATION [ ] REPORTS REVIEWED, I HEREBY DETERMINE THAT THERE [ ] IS [ ] IS NOT PROBABLE CAUSE TO BELIEVE THIS ARRESTEE HAS COMMITTED A CRIME.

(DATE)	(TIME)	(SIGNATURE OF JUDICIAL OFFICER)
_____	_____	_____

EXHIBIT: "B"

MAILING ADDRESS:
PO BOX 1138
SANTA ANA, CA 92702-1138

ROBERT B. KUHEL
CLERK AND
ADMINISTRATIVE
OFFICER

PAUL AHERN
CHIEF DEPUTY

The Municipal Court
OF THE CENTRAL ORANGE COUNTY
JUDICIAL DISTRICT
700 CIVIC CENTER DRIVE WEST
SANTA ANA, CALIFORNIA 92701-4080
TELEPHONE 714 834-3575

January 25, 1989

TO: Timothy J. Stafford, Attorney at Law

FROM: Robert L. Upson, Judicial Hearing Officer

SUBJECT: JUDICIAL HEARING ACTIVITY

		Total Hearings	Female	No P.C.	% of No PC
	01/03/87 thru 01/31/87	1,034	232	84	3.2
	02/01/87 thru 02/28/87	913	159	25	2.6
	03/01/87 thru 03/31/87	1,160	179	102	8.7
	04/01/87 thru 04/30/87	1,025	181	117	11.4
	05/01/87 thru 05/31/87	1,022	179	124	12.1
MAIN	06/01/87 thru 06/30/87	1,011	206	94	9.3
JAIL	07/01/87 thru 07/31/87	1,065	162	94	8.8
	08/01/87 thru 08/31/87	1,108	191	109	9.8
	09/01/87 thru 09/30/87	1,099	177	101	9.2
	10/01/87 thru 10/31/87	1,127	197	110	9.7
	11/01/87 thru 11/30/87	1,323	175	102	7.7
	12/01/87 thru 12/31/87	1,085	175	101	9.3
	Totals (1987)	12,972	2,213	1,113	8.5
	01/01/88 thru 01/31/88	1,266	201	162	12.8
	02/01/88 thru 02/29/88	1,083	172	116	10.7
	03/01/88 thru 03/31/88	1,195	162	149	12.4
	04/01/88 thru 04/30/88	1,251	209	143	11.4
I.R.C.	05/01/88 thru 05/31/88	1,164	175	85	7.3
	06/01/88 thru 06/30/88	1,048	154	98	9.3
	07/01/88 thru 07/31/88	1,311	185	104	7.9
	08/01/88 thru 08/31/88	1,272	211	125	9.8
	09/01/88 thru 09/30/88	1,261	209	68	6.2

	Total Hearings	Female	No P.C.	% of No PC
10/01/88 thru 10/31/88	1,219	207	86	7.5
11/01/88 thru 11/30/88	1,215	185	100	8.2
12/01/88 thru 12/31/88	1,282	180	93	7.3
Total (1988)	14,557	2,250	1,329	9.1
GRAND TOTALS	27,539	4,463	2,442	8.8

The amount of hearings conducted during the first eight months of 1988 constitutes an increase of 15% over the same time period in 1987.

EXHIBIT "C"

BOOKING NUMBER: H090559

ARREST DATE TIME: 3-18-89 2345

BOOKING DATE TIME: 3-19-89 0200

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 12020A, 12031, 12090 PC, 11377, 11350 H&S, 4143 B&P CHP F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 1510

RELEASE AUTHORITY: Bail Bond

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H090560

ARREST DATE TIME: 3-18-89 2345

BOOKING DATE TIME: 3-19-89 0215

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 12020, 12031, 12090 PC, 11377, 11350 H&S, 4143 B&P CHP F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $10,000

BOOKING NUMBER: H090562

ARREST DATE TIME: 3-19-89 0445

BOOKING DATE TIME: 3-19-89 0530

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC Riverside County Sheriff M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 1000

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H090563

ARREST DATE TIME: 3-19-89 0540

BOOKING DATE TIME: 3-19-89 1130

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11379, 11357, 11378 H&S Riverside County Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME: 3-22-89 2330

RELEASE AUTHORITY: Bail Bond

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H090564

ARREST DATE TIME: 3-19-89 0015

BOOKING DATE TIME: 3-19-89 1025

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 148, 647(f) PC Riverside County Sheriff M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 1130

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H11230

ARREST DATE TIME: 3-18-89 2315

BOOKING DATE TIME: 3-19-89 0130

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11377a, 11550 H&S Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-22-89 2030

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed at D.A. Filed by agency 3/21/89

BOOKING NUMBER: H112308

ARREST DATE TIME: 3-18-89 2045

BOOKING DATE TIME: 3-19-89 0210

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23153 VC Hemet Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 1745

RELEASE AUTHORITY: Court OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H112309

ARREST DATE TIME: 3-19-89 0155

BOOKING DATE TIME: 3-19-89 0230

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(a) VC Riverside County Sheriff M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 0530

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H112310

ARREST DATE TIME: 3-19-89 0225

BOOKING DATE TIME: 3-19-89 0240

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 1320(b) PC Riverside Police F

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $5,000

BOOKING NUMBER: H112311

ARREST DATE TIME: 3-19-89 0311

BOOKING DATE TIME: 3-19-89 0510

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11377(a), 11550 H&S Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 1930

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H112313

ARREST DATE TIME: 3-19-89 1430

BOOKING DATE TIME: 3-19-89 1500

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 490.5 PC Riverside Police M

NATURE OF INCARCERATION: Citizens

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 2000

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H112315

ARREST DATE TIME: 3-19-89

BOOKING DATE TIME: 3-19-89

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 242 PC Riverside Police M

NATURE OF INCARCERATION: Citizen

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H112316

ARREST DATE TIME: 3-19-89 1800

BOOKING DATE TIME: 3-19-89 2217

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 32 PC Corona Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 2040

RELEASE AUTHORITY: Court OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116874

ARREST DATE TIME: 3-19-89 2215

BOOKING DATE TIME: 3-19-89 2300

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC Lawton Bail Bonds F

NATURE OF INCARCERATION: Bail Surrender

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: To Indio Jail 3-20-89 F/P next court 4-3-89 in Riverside

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BOOKING NUMBER: H116939

ARREST DATE TIME: 3-19-89

BOOKING DATE TIME: 3-19-89

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC 496 PC Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS: Local

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $15,000

BOOKING NUMBER: H116940

ARREST DATE TIME: 3-19-89 1640

BOOKING DATE TIME: 3-19-89 2215

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC Corona Police F

NATURE OF INCARCERATION: Warrant

HOLDS: Local

FIRST COURT APPEARANCE: 3-21-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: F/P

BOOKING NUMBER: H116941

ARREST DATE TIME: 3-19-89 2030

BOOKING DATE TIME: 3-19-89 2130

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 490.5 PC Riverside Police M

NATURE OF INCARCERATION: Citizen

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME: 3-20-89 1650

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116942

ARREST DATE TIME: 3-19-89 2115

BOOKING DATE TIME: 3-19-89 2120

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(b), 40508(a) VC Riverside Sheriff M

NATURE OF INCARCERATION: Warrants

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 0130

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116943

ARREST DATE TIME: 3-19-89 1940

BOOKING DATE TIME: 3-19-89 2050

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC Moreno Valley Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 0100

RELEASE AUTHORITY: 849(b)(d) PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116944

ARREST DATE TIME: 3-19-89 1945

BOOKING DATE TIME: 3-19-89 2045

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(a) VC Moreno Valley Police M

NATURE OF INCARCERATION: Warrant

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 2300

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116945

ARREST DATE TIME: 3-19-89 1945

BOOKING DATE TIME: 3-19-89 2050

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(a) VC Moreno Valley Police M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 2320

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116946

ARREST DATE TIME: 3-19-89 1830

BOOKING DATE TIME: 3-19-89 1945

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) & (b), 12500(a) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 2345

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116947

ARREST DATE TIME: 3-19-89 1745

BOOKING DATE TIME: 3-19-89 1945

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 490.5 PC Riverside Sheriff M

NATURE OF INCARCERATION: Citizen

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 2210

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116948

ARREST DATE TIME: 3-19-89 1700

BOOKING DATE TIME: 3-19-89 1930

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 484(f)(2) PC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS: State

FIRST COURT APPEARANCE: 3-21-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Parole Hold

BOOKING NUMBER: H116949

ARREST DATE TIME: 3-19-89

BOOKING DATE TIME: 3-19-89

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 664/484(f)(2), 496, 853.7 PC Riverside Police F

NATURE OF INCARCERATION: On Sight & Warrant

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: F/P Bail $5,000

BOOKING NUMBER: H116950

ARREST DATE TIME: 3-19-89 1625

BOOKING DATE TIME: 3-19-89 2110

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(a) VC CHP M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Sentenced to 3-25-89

BOOKING NUMBER: H116951

ARREST DATE TIME: 3-19-89 1800

BOOKING DATE TIME: 3-19-89 1905

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 2330

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116952

ARREST DATE TIME: 3-19-89 1625

BOOKING DATE TIME: 3-19-89 2110

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: FTA 488/484 PC CHP M

NATURE OF INCARCERATION: Warrant

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 2200

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116953

ARREST DATE TIME: 3-19-89 1715

BOOKING DATE TIME: 3-19-89 1850

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC, 496 PC Moreno Valley Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-22-89 0800

RELEASE AUTHORITY: Bail Bond

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116954

ARREST DATE TIME: 3-19-89 1545

BOOKING DATE TIME: 3-19-89 1710

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11377(a), 11550 H&S Riverside Police F

NATURE OF INCARCERATION: On Sight & Warrant

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 0080

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116955

ARREST DATE TIME: 3-19-89 1645

BOOKING DATE TIME: 3-19-89 1710

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 4463(a), 14610 VC 11550 H&S Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 2230

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116956

ARREST DATE TIME: 3-19-89 1515

BOOKING DATE TIME: 3-19-89 1615

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 12020 PC Moreno Valley Police F

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $10,000

BOOKING NUMBER: H116957

ARREST DATE TIME: 3-19-89 1100

BOOKING DATE TIME: 3-19-89 1400

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC 496 PC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-22-89 2040

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed at D.A. Filed by agency 3/20/89

BOOKING NUMBER: H116958

ARREST DATE TIME: 3-19-89 1115

BOOKING DATE TIME: 3-19-89 1315

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152, 10851, 487, 2800.1, 496 PC 11550 H&S CHP F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: $25,000

BOOKING NUMBER: H116960

ARREST DATE TIME: 3-19-89 1120

BOOKING DATE TIME: 3-19-89 1145

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC Riverside Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 1630

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116961

ARREST DATE TIME: 3-19-89 0715

BOOKING DATE TIME: 3-19-89 0955

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 207, 245, 261 PC Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-21-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $25,000

BOOKING NUMBER: H116962

ARREST DATE TIME: 3-19-89 1340

BOOKING DATE TIME: 3-19-89 1350

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(a) VC Moreno Valley Police M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 1415

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116963

ARREST DATE TIME: 3-19-89 0815

BOOKING DATE TIME: 3-19-89 0930

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11377(a), 11530 H&S Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME: 3-22-89 1700

RELEASE AUTHORITY: Court Release

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116964

ARREST DATE TIME: 3-19-89 0835

BOOKING DATE TIME: 3-19-89 0900

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC (3 cts) Moreno Valley Police M

NATURE OF INCARCERATION: All out of County warrants

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 1530

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116965

ARREST DATE TIME: 3-19-89 0650

BOOKING DATE TIME: 3-19-89 0825

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 1230

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116966

ARREST DATE TIME: 3-19-89 0500

BOOKING DATE TIME: 3-19-89 0635

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 273.5 PC 11550 H&S Moreno Valley Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 1435

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116967

ARREST DATE TIME: 3-19-89 0336

BOOKING DATE TIME: 3-19-89 0625

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC, 496 PC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-21-89

RELEASE DATE TIME: 3-21-89 1645

RELEASE AUTHORITY: 5th Post Judge Order

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116968

ARREST DATE TIME: 3-19-89 0311

BOOKING DATE TIME: 3-19-89 0530

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11377(a), 11550 H&S Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME: 3-22-89 1710

RELEASE AUTHORITY: Court Release

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116969

ARREST DATE TIME: 3-19-89 0420

BOOKING DATE TIME: 3-19-89 0450

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: VCP 11377(a) H&S Riverside Sheriff F

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE: 3-21-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: To BRCC 3-21-89 sentenced

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BOOKING NUMBER: H116970

ARREST DATE TIME: 3-19-89 0200

BOOKING DATE TIME: 3-19-89 0340

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 0740

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116971

ARREST DATE TIME: 3-19-89 0212

BOOKING DATE TIME: 3-19-89 0330

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 459 PC Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-21-89

RELEASE DATE TIME: 3-21-89 1720

RELEASE AUTHORITY: 5th Post Judge Order

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116972

ARREST DATE TIME: 3-19-89 0240

BOOKING DATE TIME: 3-19-89 0340

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 0745

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116973

ARREST DATE TIME: 3-19-89 0200

BOOKING DATE TIME: 3-19-89 0315

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC Riverside Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 0715

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116974

ARREST DATE TIME: 3-19-89 0145

BOOKING DATE TIME: 3-19-89 0300

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC 11550 H&S CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 0715

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116975

ARREST DATE TIME: 3-19-89 0155

BOOKING DATE TIME: 3-19-89 0245

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC Riverside Sheriff M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 0615

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING N' .MBER: H116976

ARREST DATE TIME: 3-19-89 0050

BOOKING DATE TIME: 3-19-89 0230

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851, 23152(b) VC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-21-89

RELEASE DATE TIME: 3-21-89 0200

RELEASE AUTHORITY: 5th Post Judge Order

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116977

ARREST DATE TIME: 3-19-89 0103

BOOKING DATE TIME: 3-19-89 0230

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 853.7 PC 40508(a) VC Riverside Sheriff M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 0445

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116978

ARREST DATE TIME: 3-19-89 0115

BOOKING DATE TIME: 3-19-89 0210

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 0615

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116979

ARREST DATE TIME: 3-19-89 0010

BOOKING DATE TIME: 3-19-89 0215

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11350, 11364 H&S 12500 VC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS: State

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Parole Hold F/P

BOOKING NUMBER: H116980

ARREST DATE TIME: 3-18-89 2340

BOOKING DATE TIME: 3-19-89 0200

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC 11550 H&S, 148 PC Moreno Valley Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 0700

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116981

ARREST DATE TIME: 3-18-89 2215

BOOKING DATE TIME: 3-19-89 0055

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC Moreno Valley Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 0530

RELEASE AUTHORITY: 849(b)2 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H11698[illegible]

ARREST DATE TIME: 3-18-89 2310

BOOKING DATE TIME: 3-19-89 0005

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC CHP M

NATURE OF INCARCERATION: On Sight O/C Warrant

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 0455

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117094

ARREST DATE TIME: 3-18-89 2208

BOOKING DATE TIME: 3-19-89 0050

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a), 14601 VC Moreno Valley Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 0500

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117095

ARREST DATE TIME: 3-18-89 2200

BOOKING DATE TIME: 3-19-89 0100

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(a) VC Moreno Valley Police M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 0515

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117098

ARREST DATE TIME: 3-18-89 2215

BOOKING DATE TIME: 3-19-89 0113

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC Moreno Valley Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-19-89 0530

RELEASE AUTHORITY: 849(b)2 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117099

ARREST DATE TIME: 3-19-89 2315

BOOKING DATE TIME: 3-20-89 0140

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11379, 11377, 11550 H&S Riverside Police F

NATURE OF INCARCERATION: On Sight & Warrant

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 1745

RELEASE AUTHORITY: Bail Bond

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117100

ARREST DATE TIME: 3-19-89 2315

BOOKING DATE TIME: 3-20-89 0145

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11377(a), 11550 H&S Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 1430

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H090569

ARREST DATE TIME: 3-20-89 0210

BOOKING DATE TIME: 3-20-89 0315

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11351 H&S CHP F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $15,000

BOOKING NUMBER: H090573

ARREST DATE TIME: 3-20-89 1815

BOOKING DATE TIME: 3-20-89 2051

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 594 PC 40508(a) VC Riverside Sheriff M

NATURE OF INCARCERATION: On Sight

HOLDS: Local San Bernardino Sheriff

FIRST COURT APPEARANCE:

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Sentenced

BOOKING NUMBER: H111202

ARREST DATE TIME: 3-20-89 1020

BOOKING DATE TIME: 3-20-89 1040

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 12020(a) PC 11377 H&S Riverside Marshal F

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME: 3-20-89 1100

RELEASE AUTHORITY: Book & Release

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H111203

ARREST DATE TIME: 3-20-89 1030

BOOKING DATE TIME: 3-20-89 1040

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10980 WIC Riverside Marshal M

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME: 3-20-89 1100

RELEASE AUTHORITY: Book & Release

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117070

ARREST DATE TIME: 3-20-89 1030

BOOKING DATE TIME: 3-20-89 1045

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11378 H&S Riverside Sheriff F

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE: 3-21-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $15,000 F/P

BOOKING NUMBER: H112312

ARREST DATE TIME: 3-20-89 0457

BOOKING DATE TIME: 3-20-89 0600

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 496 PC 11378, 11377, 11351 H&S 10851 VC Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: To BRCC 3-23-89 F/P back to court 4/5

BOOKING NUMBER: H112319

ARREST DATE TIME: 3-19-89 2300

BOOKING DATE TIME: 3-20-89 0040

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 148 PC Moreno Valley Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 0415

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H112320

ARREST DATE TIME: 3-20-89 1100

BOOKING DATE TIME: 3-20-89 1100

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 480.5 PC Riverside Sheriff M

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME: 3-20-89 1200

RELEASE AUTHORITY: Book & Release

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H112322

ARREST DATE TIME: 3-20-89 0120

BOOKING DATE TIME: 3-20-89 0150

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11377(a) H&S 490.5 PC 4149 B&P Riverside Police F

NATURE OF INCARCERATION: On Sight & Local Warrant

HOLDS:

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME: 3-22-89 1800

RELEASE AUTHORITY: 5th Post Judge Order

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H112325

ARREST DATE TIME: 3-20-89 0400

BOOKING DATE TIME: 3-20-89 0510

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11350, 11550 H&S 12500(a) VC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $5,000

BOOKING NUMBER: H116875

ARREST DATE TIME: 3-20-89 1030

BOOKING DATE TIME: 3-20-89 1030

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 490.5 PC Riverside Sheriff M

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME: 3-20-89 1200

RELEASE AUTHORITY: Book & Release

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116876

ARREST DATE TIME: 3-20-89 1250

BOOKING DATE TIME: 3-20-89 1335

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(b) PC Riverside Police M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 1640

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116877

ARREST DATE TIME: 3-20-89 1233

BOOKING DATE TIME: 3-20-89 1355

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC Riverside Sheriff M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 1800

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116878

ARREST DATE TIME: 3-20-89 1450

BOOKING DATE TIME: 3-20-89 1530

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 4050(a) VC Riverside Police M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 1750

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116879

ARREST DATE TIME: 3-20-89 1700

BOOKING DATE TIME: 3-20-89 1809

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 459 PC Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-24-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $10,000 To BRCC 3-24-89 F/P

BOOKING NUMBER: H116880

ARREST DATE TIME: 3-20-89 1620

BOOKING DATE TIME: 3-20-89 2100

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11351, 11550, 11364 H&S 148.9 PC Corona Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-23-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $2,500

BOOKING NUMBER: H116881

ARREST DATE TIME: 3-20-89 1930

BOOKING DATE TIME: 3-20-89 2116

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11378, 11359, 11364, 11550 H&S Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-21-89 1820

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116886

ARREST DATE TIME: 3-20-89 1003

BOOKING DATE TIME: 3-20-89 1005

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 475(a), 484, 490.5 PC Riverside Sheriff F

NATURE OF INCARCERATION: Warrants

HOLDS: Local

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: To Indio 3-20-89 Palm Springs Warrants

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BOOKING NUMBER: H117047

ARREST DATE TIME: 3-19-89 2330

BOOKING DATE TIME: 3-20-89 0015

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(a) VC Riverside Sheriff M

NATURE OF INCARCERATION: Warrant

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-23-89 0900

RELEASE AUTHORITY: To San Bernardino County

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117048

ARREST DATE TIME: 3-19-89 2110

BOOKING DATE TIME: 3-20-89 0020

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a)(b) VC, VCP CHP M

NATURE OF INCARCERATION: On Sight & Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 0430

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117049

ARREST DATE TIME: 3-19-89 2300

BOOKING DATE TIME: 3-20-89 0040

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 245(a) PC Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-22-89 2030

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed by Arresting Agency Filed 3/23/89 with D.A.

BOOKING NUMBER: H117050

ARREST DATE TIME: 3-19-89 2020

BOOKING DATE TIME: 3-20-89 0045

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 245 PC Moreno Valley Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-23-89 0430

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed by Arresting Agency Filed 3/23/89 with D.A.

BOOKING NUMBER: H117051

ARREST DATE TIME: 3-19-89 2300

BOOKING DATE TIME: 3-20-89 0035

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 245(a)1 PC Moreno Valley Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-22-89 2030

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed by Arresting Agency Filed 3/29/89 with D.A.

BOOKING NUMBER: H117052

ARREST DATE TIME: 3-19-89 2331

BOOKING DATE TIME: 3-20-89 0050

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC Riverside Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 0500

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117053

ARREST DATE TIME: 3-19-89 2331

BOOKING DATE TIME: 3-20-89 0025

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC Riverside Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 0500

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117054

ARREST DATE TIME: 3-20-89 0030

BOOKING DATE TIME: 3-20-89 0105

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 0515

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117055

ARREST DATE TIME: 3-19-89 2334

BOOKING DATE TIME: 3-20-89 0200

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 14601(a) VC Moreno Valley Police M

NATURE OF INCARCERATION: On Sight

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 0345

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117056

ARREST DATE TIME: 3-20-89 0140

BOOKING DATE TIME: 3-20-89 0230

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 0700

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117057

ARREST DATE TIME: 3-20-89 0230

BOOKING DATE TIME: 3-20-89 0230

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(a) VC Riverside Police M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 0545

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117058

ARREST DATE TIME: 3-20-89 0200

BOOKING DATE TIME: 3-20-89 0330

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 496 PC Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 1920

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117059

ARREST DATE TIME: 3-19-89 1100

BOOKING DATE TIME: 3-20-89 0535

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152 VC Corona Police M

NATURE OF INCARCERATION: Bench Warrants

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 0950

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117060

ARREST DATE TIME: 3-19-89 2100

BOOKING DATE TIME: 3-20-89 0545

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11550, 11350 H&S 40508(a) VC Corona Police M

NATURE OF INCARCERATION: Warrant & On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-23-89 2240

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117061

ARREST DATE TIME: 3-20-89 0625

BOOKING DATE TIME: 3-20-89 0720

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11350, 11550 H&S Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS: State

FIRST COURT APPEARANCE: 3-21-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Parole Hold, $5,000 Bail

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BOOKING NUMBER: H117062

ARREST DATE TIME: 3-20-89 0600

BOOKING DATE TIME: 3-20-89 0745

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11550 H&S Riverside Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 1200

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117063

ARREST DATE TIME: 3-20-89 0600

BOOKING DATE TIME: 3-20-89 0740

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11550 H&S Riverside Police M

NATURE OF INCARCERATION: On Sight

HOLDS: State

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Parole Hold, $1,500 Bail

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BOOKING NUMBER: H117064

ARREST DATE TIME: 3-20-89 0600

BOOKING DATE TIME: 3-20-89 0800

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11377(a), 11550 H&S Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS: Fed

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: INS Hold, $1,500 Bail

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BOOKING NUMBER: H117065

ARREST DATE TIME: 3-20-89 0510

BOOKING DATE TIME: 3-20-89 0819

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-22-89 2200

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed by Arresting Agency Filed 3/22/89 with D.A.

BOOKING NUMBER: H117066

ARREST DATE TIME: 3-20-89 0830

BOOKING DATE TIME: 3-20-89 0902

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 3056 PC California Department Corrections F

NATURE OF INCARCERATION: Parole Return to Custody

HOLDS: State

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 1515

RELEASE AUTHORITY: To Parole

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117067

ARREST DATE TIME: 3-20-89 0530

BOOKING DATE TIME: 3-20-89 0830

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC Moreno Valley Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 1145

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117068

ARREST DATE TIME: 3-20-89 0645

BOOKING DATE TIME: 3-20-89 0840

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 273.5, 149 PC Moreno Valley Police F

NATURE OF INCARCERATION: On Sight

HOLDS: Parole State

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-24-89 0900

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Complaint Filed Late with D.A. Rejected by D.A. 3/28/89 Released To Parole 3/24

BOOKING NUMBER: H117069

ARREST DATE TIME: 3-20-89 0915

BOOKING DATE TIME: 3-20-89 1000

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: Violation Probation Marshal M

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: To BRCC 3-22-89, Sentenced

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BOOKING NUMBER: H117071

ARREST DATE TIME: 3-20-89 1030

BOOKING DATE TIME: 3-20-89 1100

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 288, 261 PC Riverside Sheriff F

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $125,000

BOOKING NUMBER: H117072

ARREST DATE TIME: 3-20-89 1030

BOOKING DATE TIME: 3-20-89 1158

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(a) VC Riverside Police M

NATURE OF INCARCERATION: Warrant Riverside County

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-23-89 0420

RELEASE AUTHORITY: To Orange County

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117073

ARREST DATE TIME: 3-20-89 0910

BOOKING DATE TIME: 3-20-89 1230

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 118(a) PC 40508(a) VC Marshal F

NATURE OF INCARCERATION: Warrants

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME: 3-24-89 1230

RELEASE AUTHORITY: Bail

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117074

ARREST DATE TIME: 3-20-89 1215

BOOKING DATE TIME: 3-20-89 1246

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: Violation Probation on 647(f) PC Marshal M

NATURE OF INCARCERATION: Bench Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 1645

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117075

ARREST DATE TIME: 3-20-89 1200

BOOKING DATE TIME: 3-20-89 1300

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 602.5, 242, 166.4 PC Riverside Police M

NATURE OF INCARCERATION: Citizen & Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-21-89 0100

RELEASE AUTHORITY: Bail Bond

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117076

ARREST DATE TIME: 3-20-89 1045

BOOKING DATE TIME: 3-20-89 1335

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 166.4 PC Marshal M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME: 3-20-89 2135

RELEASE AUTHORITY: Court Release

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117077

ARREST DATE TIME: 3-20-89 0515

BOOKING DATE TIME: 3-20-89 1345

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 484(f) PC Corona Police F

NATURE OF INCARCERATION: Warrant

HOLDS: Local & State

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-23-89 0900

RELEASE AUTHORITY: To San Bernardino County

COMMENTS WHY INMATE IS STILL IN CUSTODY: Parole Hold

BOOKING NUMBER: H117078

ARREST DATE TIME: 3-20-89 1410

BOOKING DATE TIME: 3-20-89 1410

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: VOP Unpaid Fine Riverside Police M

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: To BRCC 3-21-89 Sentenced to 3-28-89

BOOKING NUMBER: H117079

ARREST DATE TIME: 3-20-89 1400

BOOKING DATE TIME: 3-20-89 1435

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 182, 484, 459, 4905 PC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME: 3-22-89 1710

RELEASE AUTHORITY: Court Release

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117080

ARREST DATE TIME: 3-20-89 1415

BOOKING DATE TIME: 3-20-89 1500

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 166.4 PC Marshal M

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-24-89 0001

RELEASE AUTHORITY: Time Served

COMMENTS WHY INMATE IS STILL IN CUSTODY: To BRCC 3-21-89 Sentenced

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BOOKING NUMBER: H117081

ARREST DATE TIME: 3-20-89 1402

BOOKING DATE TIME: 3-20-89 1500

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(a) VC Marshal M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-24-89 0001

RELEASE AUTHORITY: Time Served

COMMENTS WHY INMATE IS STILL IN CUSTODY: To BRCC 3-21-89, Sentenced

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BOOKING NUMBER: H117082

ARREST DATE TIME: 3-20-89 1525

BOOKING DATE TIME: 3-20-89 1525

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: Violation Probation Riverside Sheriff F

NATURE OF INCARCERATION: Bench Warrant

HOLDS: Local

FIRST COURT APPEARANCE: 3-23-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: San Bernardino Sheriff Holds F/P

BOOKING NUMBER: H117083

ARREST DATE TIME: 3-20-89 1545

BOOKING DATE TIME: 3-20-89 1545

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 853.7 PC Riverside Sheriff M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE: 3-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: To BRCC 3-23-89, Sentenced until 3/25

BOOKING NUMBER: H117084

ARREST DATE TIME: 3-20-89 1525

BOOKING DATE TIME: 3-20-89 1630

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 853.7 PC Riverside Sheriff M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE: 3-20-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: To BRCC 3-21-89, Sentenced

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BOOKING NUMBER: H117085

ARREST DATE TIME: 3-20-89 1515

BOOKING DATE TIME: 3-20-89 1700

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 261 (2) PC Riverside Sheriff F

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: To BRCC 3-21-89, Sentenced

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BOOKING NUMBER: H117086

ARREST DATE TIME: 3-20-89 1650

BOOKING DATE TIME: 3-20-89 1725

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(b) VC Riverside Police M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-20-89 2245

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117087

ARREST DATE TIME: 3-20-89 1730

BOOKING DATE TIME: 3-20-89 1805

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 1056 PC State Parole F

NATURE OF INCARCERATION: Parole Return to Custody

HOLDS: State

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-21-89 1000

RELEASE AUTHORITY: To Parole

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117088

ARREST DATE TIME: 03-20-89 1925

BOOKING DATE TIME: 03-20-89 2035

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC Moreno Valley PD M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 0035

RELEASE AUTHORITY: 849(b)1 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117089

ARREST DATE TIME: 03-20-89 1915

BOOKING DATE TIME: 03-20-89 1915

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(b) VC 11550 H&S Riverside Sheriff M

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: To BRCC on 03-21-89 – Pre Trial Sentenced 90 days

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BOOKING NUMBER: H117090

ARREST DATE TIME: 03-20-89 1740

BOOKING DATE TIME: 03-20-89 1920

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11351.5, 11550 H&S 1203.2A PC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-23-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $25,000.00

BOOKING NUMBER: H117091

ARREST DATE TIME: 03-20-89 1850

BOOKING DATE TIME: 03-20-89 1930

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 242 PC Riverside Police M

NATURE OF INCARCERATION: Citizen

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 3-21-89 2245

RELEASE AUTHORITY: Self Cash Bail

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117092

ARREST DATE TIME: 03-20-89 1400

BOOKING DATE TIME: 03-20-89 2100

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 487.2 PC 40508(A) VC Corona Police F

NATURE OF INCARCERATION: On Sight/Warrant

HOLDS: Out of State (Fugitive)

FIRST COURT APPEARANCE: 03-21-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: NEVADA FUGITIVE, Transferred To Blythe 03-22-89 – Sentenced

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BOOKING NUMBER: H117093

ARREST DATE TIME: 03-20-89 1930

BOOKING DATE TIME: 03-20-89 2120

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11550 H&S Riverside Sheriff M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 0130

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117351

ARREST DATE TIME: 03-20-89 1930

BOOKING DATE TIME: 03-20-89 2125

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11378, 11359, 11364, 11550 H&S Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 0230

RELEASE AUTHORITY: Bail Bond

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117352

ARREST DATE TIME: 03-20-89 2100

BOOKING DATE TIME: 03-20-89 2225

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(A) VC Moreno Valley PD M

NATURE OF INCARCERATION: Out of County Warrant

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2355

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117353

ARREST DATE TIME: 03-20-89 2100

BOOKING DATE TIME: 03-20-89 2230

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11550 H&S 12031 PC Moreno Valley PD M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 0300

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117354

ARREST DATE TIME: 03-20-89 2135

BOOKING DATE TIME: 03-20-89 2237

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) & (b) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 0340

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117355

ARREST DATE TIME: 03-20-89 2150

BOOKING DATE TIME: 03-20-89 2250

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC, 496 PC CHP F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-23-89 2310

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed by Arresting Agency for Further Inv. Not Filed as of 3/29

BOOKING NUMBER: H117356

ARREST DATE TIME: 03-20-89 2130

BOOKING DATE TIME: 03-20-89 2255

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 664/10851, 10852 (3 cts) VC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: To BRCC 03-23-89 F/P 04-05-89

BOOKING NUMBER: H11357 [sic]

ARREST DATE TIME: 03-20-89 1815

BOOKING DATE TIME: 03-20-89 2300

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 187 PC, 261 PC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS: Local

FIRST COURT APPEARANCE: 03-23-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $250,000.00

BOOKING NUMBER: H117358

ARREST DATE TIME: 03-20-89 2120

BOOKING DATE TIME: 03-20-89 2345

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 490.5 PC, 666 PC Moreno Valley PD F

NATURE OF INCARCERATION: Citizen

HOLDS:

FIRST COURT APPEARANCE: 03-23-89

RELEASE DATE TIME: 03-23-89 1635

RELEASE AUTHORITY: 5th Post Judge Order

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H020556

ARREST DATE TIME: 03-21-89 0945

BOOKING DATE TIME: 03-21-89 1000

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 4390 PC Riverside Marshal M

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 1030

RELEASE AUTHORITY: Book & Release

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H090570

ARREST DATE TIME: 03-21-89 2050

BOOKING DATE TIME: 03-21-89 2116

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC 40508(A) VC 5 cts CHP M

NATURE OF INCARCERATION: On Sight & Riv. Co. Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-22-89 0500

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H090581

ARREST DATE TIME: 03-21-89 1200

BOOKING DATE TIME: 03-21-89 1206

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 607.5 PC Riverside Sheriff M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 1945

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116883

ARREST DATE TIME: 03-21-89 1030

BOOKING DATE TIME: 03-21-89 1030

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10980 c WIC Riverside Sheriff M

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 1100

RELEASE AUTHORITY: Book & Release

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116884

ARREST DATE TIME: 03-21-89 0930

BOOKING DATE TIME: 03-21-89 1126

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 496 PC, 476(a) PC Riverside Sheriff F

NATURE OF INCARCERATION: Court Order from CIW

HOLDS: State

FIRST COURT APPEARANCE: 03-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Parole Hold Bail $10,000.00

BOOKING NUMBER: H116885

ARREST DATE TIME: 03-20-89 1700

BOOKING DATE TIME: 03-21-89 1150

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 666/490.5 PC Perris Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-24-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Held for further proceedings

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BOOKING NUMBER: H116887

ARREST DATE TIME: 03-21-89 1245

BOOKING DATE TIME: 03-21-89 1400

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(A) VC Riverside Sheriff M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 1810

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116888

ARREST DATE TIME: 03-21-89 1530

BOOKING DATE TIME: 03-21-89 1545

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11359 H&S Riverside Sheriff F

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2125

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116889

ARREST DATE TIME: 03-21-89 1530

BOOKING DATE TIME: 03-21-89 1820

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11377, 11550 H&S 4149 B&P Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-24-89

RELEASE DATE TIME: 03-24-89 1600

RELEASE AUTHORITY: 5th Post Judge Order

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116890

ARREST DATE TIME: 03-21-89 1600

BOOKING DATE TIME: 03-21-89 1900

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 490.5 PC B/W VOP Riverside Police M

NATURE OF INCARCERATION: Citizen & Warrant

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2350

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116891

ARREST DATE TIME: 03-21-89 1855

BOOKING DATE TIME: 03-21-89 2145

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11365 H&S Riverside Sheriff M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-22-89 0300

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116892

ARREST DATE TIME: 03-21-89 1855

BOOKING DATE TIME: 03-21-89 2150

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11378, 11359, 11364 H&S 4149 B&P Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-24-89 1830

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed By Arresting Agency Not filed as of 3/29/89.

BOOKING NUMBER: H116893

ARREST DATE TIME: 03-21-89 1855

BOOKING DATE TIME: 03-21-89 2200

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11378, 11359, 11364 11365 H&S; 4149 B&P Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-22-89 1810

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116894

ARREST DATE TIME: 03-21-89 1900

BOOKING DATE TIME: 03-21-89 2200

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11365 H&S Riverside Sheriff M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-22-89 0300

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116895

ARREST DATE TIME: 03-21-89 1855

BOOKING DATE TIME: 03-21-89 2215

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11378, 11359, 11364 11365 H&S; 4149 B&P Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-22-89 1115

RELEASE AUTHORITY: Bail Bond

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116896

ARREST DATE TIME: 03-21-89 2000

BOOKING DATE TIME: 03-21-89 2225

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11378 H&S 11359 H&S F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-22-89 1745

RELEASE AUTHORITY: Bail Bond

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116897

ARREST DATE TIME: 03-21-89 2115

BOOKING DATE TIME: 03-21-89 2230

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC Moreno Valley PD M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-22-89 0300

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116898

ARREST DATE TIME: 03-21-89 2220

BOOKING DATE TIME: 03-21-89 2250

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: FTA Out of County Riverside Sheriff M

NATURE OF INCARCERATION: Warrant

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-22-89 0300

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H116899

ARREST DATE TIME: 03-21-89 1600

BOOKING DATE TIME: 03-21-89 2315

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 498, 459, 496, 12020 PC; 40508a VC Corona Police F

NATURE OF INCARCERATION: On Sight & Riv. Co. Warrant

HOLDS:

FIRST COURT APPEARANCE: 03-24-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $7570.00 F/P

BOOKING NUMBER: H116901

ARREST DATE TIME: 03-21-89 1600

BOOKING DATE TIME: 03-21-89 2330

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 496 PC, 11550 H&S Corona Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-24-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $2500.00 F/P

BOOKING NUMBER: H117359

ARREST DATE TIME: 03-21-89 2145

BOOKING DATE TIME: 03-21-89 0015

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 0430

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117360

ARREST DATE TIME: 03-20-89 2346

BOOKING DATE TIME: 03-21-89 0025

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11550 H&S Riverside Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-24-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: FURTHER PROCEEDINGS Bail $5,000.00

BOOKING NUMBER: H117361

ARREST DATE TIME: 03-20-89 2340

BOOKING DATE TIME: 03-21-89 0025

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(A) VC Riverside Police M

NATURE OF INCARCERATION: Warrant

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 0400

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117362

ARREST DATE TIME: 03-20-89 2310

BOOKING DATE TIME: 03-21-89 0035

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC Riverside Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 0435

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117363

ARREST DATE TIME: 03-21-89 0100

BOOKING DATE TIME: 03-21-89 0110

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 286 PC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer .

COMMENTS WHY INMATE IS STILL IN CUSTODY: To Indio 03-24-89 F/P in Riverside 04-05-89

BOOKING NUMBER: H117364

ARREST DATE TIME: 03-20-89 2330

BOOKING DATE TIME: 03-21-89 0205

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11350, 11550 H&S 23152 VC Moreno Vally PD F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-23-89 1925

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed by Arresting Agency Not Filed as of 3/29/89

BOOKING NUMBER: H117365

ARREST DATE TIME: 03-20-89 2330

BOOKING DATE TIME: 03-21-89 0206

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11550 H&S Moreno Valley PD M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 0600

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117366

ARREST DATE TIME: 03-20-89 2325

BOOKING DATE TIME: 03-21-89 0205

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC, 496, 12031, 12025 PC Moreno Valley PD F

NATURE OF INCARCERATION: On Sight and Out of County Warrant

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 1820

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117367

ARREST DATE TIME: 03-21-89 0130

BOOKING DATE TIME: 03-21-89 0220

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11377a, 11550 H&S 12500 VC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 1630

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117368

ARREST DATE TIME: 03-21-89 0150

BOOKING DATE TIME: 03-21-89 0235

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 0635

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117369

ARREST DATE TIME: 03-21-89 0200

BOOKING DATE TIME: 03-21-89 0245

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 0645

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117370

ARREST DATE TIME: 03-21-89 0045

BOOKING DATE TIME: 03-21-89 0300

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 240 PC Moreno Valley PD M

NATURE OF INCARCERATION: Citizen

HOLDS:

FIRST COURT APPEARANCE: 03-23-89

RELEASE DATE TIME: 03-23-89 1645

RELEASE AUTHORITY: 5th Post Judge Order

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117371

ARREST DATE TIME: 03-21-89 0030

BOOKING DATE TIME: 03-21-89 0310

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 488, 148 PC Riverside Sheriff M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-23-89 2315

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed by Arresting Agency Not Filed as of 3/29/89

BOOKING NUMBER: H117372

ARREST DATE TIME: 03-21-89 0030

BOOKING DATE TIME: 03-21-89 0305

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 484 f PC Riverside Sheriff M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 0420

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117373

ARREST DATE TIME: 03-21-89 0212

BOOKING DATE TIME: 03-21-89 0305

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11359 H&S, 647f PC Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2100

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117374

ARREST DATE TIME: 03-21-89 0200

BOOKING DATE TIME: 03-21-89 0320

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 0730

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117375

ARREST DATE TIME: 03-21-89 0300

BOOKING DATE TIME: 03-21-89 0340

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(A) VC Riverside Sheriff M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE: 03-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Sentenced to 04-25-89

BOOKING NUMBER: H117376

ARREST DATE TIME: 03-21-89 0215

BOOKING DATE TIME: 03-21-89 0340

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC 12500 VC Riverside Police M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIM .. 03-21-89 0740

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117377

ARREST DATE TIME: 03-21-89 0300

BOOKING DATE TIME: 03-21-89 0520

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 487, 602 PC 10852 VC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-24-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Pled Guilty & Sentenced until 04-08-89

BOOKING NUMBER: H117378

ARREST DATE TIME: 03-21-89 0300

BOOKING DATE TIME: 03-21-89 0520

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10852 VC, 11377 H&S 487,602,148.9 PC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-23-89 2225

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed by Arresting Agency Not Filed as of 3/29/89

BOOKING NUMBER. H117379

ARREST DATE TIME: 03-21-89 0520

BOOKING DATE TIME: 03-21-89 0735

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 459, 496 PC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-23-89

RELEASE DATE TIME: 03-23-89 1650

RELEASE AUTHORITY: 5th Post Judge Order

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117380

ARREST DATE TIME: 03-21-89 0530

BOOKING DATE TIME: 03-21-89 0730

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC, 496 PC Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-23-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Sentenced, no time comp. yet.

BOOKING NUMBER: H117382

ARREST DATE TIME: 03-21-89 0800

BOOKING DATE TIME: 03-21-89 0800

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 211 PC Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: In RGH until 03-23-89 825 PC started 03-24-89

BOOKING NUMBER: H117383

ARREST DATE TIME: 03-21-89 0300

BOOKING DATE TIME: 03-21-89 0830

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11377 H&S, 12031 PC 4149 B&P, 14601 VC Tri-County Transprt

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE: 03-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: To Indio Jail 03-21-89 Palm Springs case originally

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BOOKING NUMBER: H117384

ARREST DATE TIME: 03-21-89 0855

BOOKING DATE TIME: 03-21-89 0915

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(b), 23182 VC 192(3) PC Riverside Sheriff F

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE: 03-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Sentenced 4 Years

BOOKING NUMBER: H117385

ARREST DATE TIME: 03-21-89 0936

BOOKING DATE TIME: 03-21-89 1035

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a)&(b) VC Riverside Marshal M

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE: 03-21-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: To BRCC 03-21-89 Sentenced

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BOOKING NUMBER: H117386

ARREST DATE TIME: 03-21-89 0915

BOOKING DATE TIME: 03-21-89 1045

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC 11550 H&S Riverside Marshal M

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE: 03-21-89

RELEASE DATE TIME: 03-21-89 1240

RELEASE AUTHORITY: Bail Bond

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117387

ARREST DATE TIME: 03-21-89 0945

BOOKING DATE TIME: 03-21-89 1047

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a), 40508A, 16028A VC, 853.7 PC Riverside Marshal M

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE: 03-21-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: $100,000.00 F/P

BOOKING NUMBER: H117389

ARREST DATE TIME: 03-21-89 1010

BOOKING DATE TIME: 03-21-89 1125

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(a) VC 4463 VC Moreno Valley PD M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 1415

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117390

ARREST DATE TIME: 03-21-89 1000

BOOKING DATE TIME: 03-21-89 1145

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11550 H&S Riverside Sheriff M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE: 03-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: To Indio Jail 03-21-89 Palm Springs

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BOOKING NUMBER: H117391

ARREST DATE TIME: 03-20-89 1515

BOOKING DATE TIME: 03-21-89 1159

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 666 PC Perris Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-23-89 2230

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed by Arresting Agency Filed with D.A. 3/24/89

BOOKING NUMBER: H117392

ARREST DATE TIME: 03-21-89 0900

BOOKING DATE TIME: 03-21-89 1153

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 459 PC Riverside Sheriff F

NATURE OF INCARCERATION: Court Order from CIM

HOLDS:

FIRST COURT APPEARANCE: 03-24-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: CDC Detainer

BOOKING NUMBER: H117393

ARREST DATE TIME: 03-21-89 2330

BOOKING DATE TIME: 03-21-89 1205

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11351, 12021, 12020 12651, 466 PC Perris Polic F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-24-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY Held for Further Proceedings

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BOOKING NUMBER: H117394

ARREST DATE TIME: 03-21-89 0212

BOOKING DATE TIME: 03-21-89 1208

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 496 PC Perris Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2020

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117395

ARREST DATE TIME: 03-21-89 1210

BOOKING DATE TIME: 03-21-89 1250

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 4143 B&P 853.7 OK Riverside Sheriff M

NATURE OF INCARCERATION: On Sight & Out of County Warrant

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2100

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117396

ARREST DATE TIME: 03-21-89 1245

BOOKING DATE TIME: 03-21-89 1320

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: Violation Probation Riverside Sheriff F

NATURE OF INCARCERATION: Bench Warrant

HOLDS:

FIRST COURT APPEARANCE: 03-21-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: Sentenced To BRCC 03-22-89

BOOKING NUMBER: H117397

ARREST DATE TIME: 03-21-89 1240

BOOKING DATE TIME: 03-21-89 1320

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 4463(A) VC Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2000

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117398

ARREST DATE TIME: 03-21-89 1300

BOOKING DATE TIME: 03-21-89 1353

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 490.5 PC, 40508A VC Riverside Police M

NATURE OF INCARCERATION: Citizen & Warrant

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 1815

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117399

ARREST DATE TIME: 03-21-89 1410

BOOKING DATE TIME: 03-21-89 1410

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11357(c) H&S Riverside Sheriff M

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE: 03-21-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE JS STILL IN CUSTODY: Sentenced to BRCC 03-22-89

BOOKING NUMBER: H117400

ARREST DATE TIME: 03-21-89 1350

BOOKING DATE TIME: 03-21-89 1515

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC, 496, 498.3 PC CHP F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-23-89 1835

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed by Arresting Agency for Further Inv. Not Filed as of 3/29

BOOKING NUMBER: H117401

ARREST DATE TIME: 03-21-89 1351

BOOKING DATE TIME: 03-21-89 1530

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC, 496, 487 PC CHP F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-23-89 2230

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed by Arresting Agency for Further Inv. Not Filed as of 3/29.

BOOKING NUMBER: H117402

ARREST DATE TIME: 03-21-89 1525

BOOKING DATE TIME: 03-21-89 1546

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 242 PC Riverside Sheriff M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-23-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: Sentenced to BRCC

BOOKING NUMBER: H117403

ARREST DATE TIME: 03-21-89 0130

BOOKING DATE TIME: 03-21-89 1545

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 459 PC 40508(a) VC Corona Police F

NATURE OF INCARCERATION: On Sight & Warrant

HOLDS:

FIRST COURT APPEARANCE: 03-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $12500.00

BOOKING NUMBER: H117404

ARREST DATE TIME: 03-21-89 1515

BOOKING DATE TIME: 03-21-89 1620

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC State Parks M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2025

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117405

ARREST DATE TIME: 03-21-89 1305

BOOKING DATE TIME: 03-21-89 1640

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11550(7cts) H&S 594, 602.5 PC, 23152 VC Riverside Marshal M

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE: 03-21-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Further proceedings No Bail

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BOOKING NUMBER: H117406

ARREST DATE TIME: 03-21-89 1540

BOOKING DATE TIME: 03-21-89 1710

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11550 H&S Riverside Police M

NATURE OF INCARCERATION: On Sight

HOLDS: State

FIRST COURT APPEARANCE:

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Parole Hold 825 PC 03-24-89 on Local Charge

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BOOKING NUMBER: 03-21-89 H117407 [sic]

ARREST DATE TIME: 03-21-89 1725 [sic]

BOOKING DATE TIME: Violation Probation 1737 [sic]

ALL CHARGES ARREST AND ADDED ARRESTING [sic] AGENCY: Riverside Police M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE: 03-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Sentenced/Fined

BOOKING NUMBER: H117408

ARREST DATE TIME: 03-21-89 1700

BOOKING DATE TIME: 03-21-89 1755

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2215

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117409

ARREST DATE TIME: 03-21-89 1530

BOOKING DATE TIME: 03-21-89 1825

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC, 496 PC Riverside Sheriff F

NATUKE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-24-89

RELEASE DATE TIME: 03-24-89 1630

RELEASE AUTHORITY: 5th Post Judge Order

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117410

ARREST DATE TIME: 03-21-89 1530

BOOKING DATE TIME: 03-21-89 1825

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11377(a), 11550 H&S 40508(a) VC Moreno Valley PD F

NATURE OF INCARCERATION: On Sight & Riv. Co. Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-23-89 0900

RELEASE AUTHORITY: Bail Bond

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117411

ARREST DATE TIME: 03-21-89 1640

BOOKING DATE TIME: 03-21-89 1830

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC Moreno Valley PD M

NATURE OF INCARCERATION: On Sight

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2345

RELEASE AUTHORITY: 853.6 PC 849(b)(2) PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: – Compton Warrant

BOOKING NUMBER: H117412

ARREST DATE TIME: 03-21-89 1530

BOOKING DATE TIME: 03-21-89 1825

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(A) VC Riverside Sheriff M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2030

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117413

ARREST DATE TIME: 03-21-89 1600

BOOKING DATE TIME: 03-21-89 1645

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 853.7 PC Riverside Sheriff M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE: 03-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY: Transfer

COMMENTS WHY INMATE IS STILL IN CUSTODY: To BRCC 03-23-89 Sentenced

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BOOKING NUMBER: H117414

ARREST DATE TIME: 03-21-89 1630

BOOKING DATE TIME: 03-21-89 1830

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 40508(A) VC Moreno Valley PD M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2030

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117415

ARREST DATE TIME: 03-21-89 1820

BOOKING DATE TIME: 03-21-89 1845

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 273A(2) PC 647(f) PC Riverside Sheriff M

NATURE OF INCARCERATION: Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2215

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117416

ARREST DATE TIME: 03-21-89 1830

BOOKING DATE TIME: 03-21-89 1935

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC Moreno Valley PD M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2335

RELEASE AUTHORITY: 849(b)(1) PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117417

ARREST DATE TIME: 03-21-89 1755

BOOKING DATE TIME: 03-21-89 1940

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 647(f) PC Moreno Valley PD M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2340

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117418

ARREST DATE TIME: 03-21-89 1946

BOOKING DATE TIME: 03-21-89 1955

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC Riverside Sheriff M

NATURE OF INCARCERATION: Out of County Warrant

HOLDS: Local

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2345

RELEASE AUTHORITY: 853.6 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117419

ARREST DATE TIME: 03-21-89 1835

BOOKING DATE TIME: 03-21-89 2010

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 490.5 PC Riverside Police M

NATURE OF INCARCERATION: Citizen

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-21-89 2130

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117420

ARREST DATE TIME: 03-21-89 1855

BOOKING DATE TIME: 03-21-89 2150

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11378, 11359, 11364 H&S, 40508a, 40508b Riverside Sheriff F

NATURE OF INCARCERATION: On Sight & Riv. Co. Warrant

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Held on Local Warrants

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BOOKING NUMBER: H117421

ARREST DATE TIME: 03-21-89 2045

BOOKING DATE TIME: 03-21-89 2145

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC CHP M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-22-89 0145

RELEASE AUTHORITY: 853.9 PC

COMMENTS–WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117422

ARREST DATE TIME: 03-21-89 1855

BOOKING DATE TIME: 03-21-89 2148

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11378, 11359, 11369 H&S Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-24-89 1855

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed by Arresting Agency Not Filed as of 3/29/89

BOOKING NUMBER: H117423

ARREST DATE TIME: 03-21-89 1855

BOOKING DATE TIME: 03-21-89 2150

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11378, 11359, 11364, 11365H&S, 4149 B&P Riverside Sheriff F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-24-89 1900

RELEASE AUTHORITY: 825 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY: Delayed by Arresting Agency Not Filed as of 3/29/89

BOOKING NUMBER: H117424

ARREST DATE TIME: 03-21-89 1855

BOOKING DATE TIME: 03-21-89 2200

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: Violation Probat. 11378 H&S F

NATURE OF INCARCERATION: On Sight

HOLDS: State

FIRST COURT APPEARANCE:

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: 03-24-89 825 PC Parole Hold

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BOOKING NUMBER: H117425

ARREST DATE TIME: 03-21-89 1940

BOOKING DATE TIME: 03-21-89 2210

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11378, 11359 H&S 496 PC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-22-89 1038

RELEASE AUTHORITY: Bail Bond

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117426

ARREST DATE TIME: 03-21-89 2020

BOOKING DATE TIME: 03-21-89 2210

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11377 H&S Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-24-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $5,000.00 F/P

BOOKING NUMBER: H117427

ARREST DATE TIME: 03-21-89 2130

BOOKING DATE TIME: 03-21-89 2215

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 242, 273.5 PC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-23-89

RELEASE DATE TIME: 03-24-89 1900

RELEASE AUTHORITY: T/S

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117428

ARREST DATE TIME: 03-21-89 2158

BOOKING DATE TIME: 03-21-89 2230

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 245(a) PC 40508(a) VC Riverside Sheriff F

NATURE OF INCARCERATION: Warrant

HOLDS: Local

FIRST COURT APPEARANCE: 03-22-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Bail $25,000.00 F/P -

---

BOOKING NUMBER: H117429

ARREST DATE TIME: 03-21-89 2130

BOOKING DATE TIME: 03-21-89 2230

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a)&(b) VC Moreno Valley PD M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-22-89 0230

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117430

ARREST DATE TIME: 03-21-89 1800

BOOKING DATE TIME: 03-21-89 2255

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC Corona PD F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-22-89 1840

RELEASE AUTHORITY: OR

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117431

ARREST DATE TIME: 03-21-89 2000

BOOKING DATE TIME: 03-21-89 2235

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 23152(a) VC Moreno Valley PD M

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE:

RELEASE DATE TIME: 03-22-89 0235

RELEASE AUTHORITY: 853.9 PC

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117432

ARREST DATE TIME: 03-21-89 1800

BOOKING DATE TIME: 03-21-89 2300

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851 VC 496 PC F

NATURE OF INCARCERATION: On Sight

HOLDS: State

FIRST COURT APPEARANCE: 03-24-89

RELEASE DATE TIME:

RELEASE AUTHORITY:

COMMENTS WHY INMATE IS STILL IN CUSTODY: Parole Hold

BOOKING NUMBER: H117433

ARREST DATE TIME: 03-21-89 2110

BOOKING DATE TIME: 03-21-89 2310

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 10851, 496, 23152(a) VC Riverside Police F

NATURE OF INCARCERATION: On Sight

HOLDS:

FIRST COURT APPEARANCE: 03-23-89

RELEASE DATE TIME: 03-23-89 1705

RELEASE AUTHORITY: 5th Post Judge Order

COMMENTS WHY INMATE IS STILL IN CUSTODY:

BOOKING NUMBER: H117388

ARREST DATE TIME: 03-21-89 0900

BOOKING DATE TIME: 03-21-89 1130

ALL CHARGES ARREST AND ADDED ARRESTING AGENCY: 11377 H&S F

NATURE OF INCARCERATION: Court Commit

HOLDS:

FIRST COURT APPEARANCE: 03-22-89

RELEASE DATE TIME: 03-22-89 2230

RELEASE AUTHORITY: Time Served

COMMENTS WHY INMATE IS STILL IN CUSTODY:

EXHIBIT: "D"

- APRIL 3, 1989

RIVERSIDE COUNTY MAIN JAIL
BOOKING STUDY - MARCH, 1989

In March, 1989, a survey was conducted at the Riverside Jail tracking all bookings for 72 hours between 0001 hours, Sunday, 3/19/89, through 2400 hours, Tuesday, 3/21/89.

A total of 228 prisoners were booked during the survey:

108 prisoners were booked for felonies (47.4%)

120 prisoners were booked for misdemeanors (52.6%)

MISDEMEANOR BOOKINGS (3 DAYS)

TOTAL (52.6%)	=	120
Less 11% not booked for new arrest	=	-13
		107

EXAMPLES: Court commitment - unsentenced
Court commitment - sentenced
Court commitment - book & release
Probation commitment - VOP
Bail surrender

Non-warrant bookings (on-sight arrest) (58%)	=	62

RELEASED

Released within 24 hours (89%)	=	55
Released within 36 hours	=	1
Released within 48 hours	=	0
Released within 72 hours	=	1
Released (P.C. § 825)	=	1
TOTAL (94%):		58

HELD

Arraigned and Held for another agency (state Parole)	=	2
Arraigned and Held for further court proceedings	=	1
Arraigned and Sentenced to custody	=	1
TOTAL (6%)		4

FELONY BOOKINGS (3 DAYS)

TOTAL (47.4%)	=	108
Less 12% not booked for new arrest	=	-13
		95

EXAMPLES: Court commitment - unsentenced
Court commitment - sentenced
Court commitment - book & release
Probation commitment - VOP
Bail surrender

Non-warrant bookings (on-sight arrest) (82%)	=	78

RELEASED

Released within 24 hours (22%)	=	17
Released within 36 hours	=	2
Released within 48 hours	=	2
Released within 72 hours	=	9
Released (P.C. § 825)	=	16
TOTAL (59%):		46

HELD

Arraigned and Held for another agency (Local, State and Federal)	=	13
Arraigned and Held for further court proceedings	=	13
Arraigned and Sentenced to custody	=	3
Arraigned and Released (court released/bail)	=	3
TOTAL (41%)		32

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD LEE McLAUGHLIN, et al. Plaintiffs, vs. THE COUNTY OF RIVERSIDE, et al., Defendants.	CASE NO. CV 87-5597 RG PLAINTIFFS' REPLY MEMORANDUM DATE: April 17, 1989 TIME: 10:00 a.m. COURTROOM: 16

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD LEE McLAUGHLIN, et al. Plaintiffs, vs. THE COUNTY OF RIVERSIDE, et al., Defendants.	CASE NO. CV 87-5597 RG PLAINTIFFS' REPLY MEMORANDUM DATE: April 17, 1989 TIME: 10:00 a.m. COURTROOM: 16

I. IS SIXTEEN DAYS BEFORE A JUDICIAL DETERMINATION OF PROBABLE CAUSE FOR CONTINUED DETENTION TOO LONG?

Because of overcrowding in the Riverside County Jails, virtually no misdemeanor arrestees are held in custody (Deposition of District Attorney Trask at p. 9, lines 1 through 7) (EXHIBIT 7). Felony arrestees, particularly if there is an intervening weekend and holiday, may be held 4, 5, or 6 days without a first judicial appearance. Penal Code § 991 applies only to *misdemeanor* arrestees. Felony arrestees must then demand a probable cause hearing which takes place *within 10 days after arraignment* (Deposition of District Attorney Trask at p. 8, lines 7 through 18).

The felony arrestees in Riverside County, as throughout the state, are not murderers. The vast majority of felony arrests are drug or alcohol related. There are, of course, some felony burglaries. Often these are thefts of a six pack of beer or a pair of pants transmuted by innovative report writing into felony burglaries because the arrestee "entered the store intending to steal." (!!)

Defendants claim that their present procedure comports with the requirements of *Gerstein v. Pugh*, 420 U.S. 103; 43 L.Ed.2d 54; 95 S.Ct. 854 (1975). *Gerstein* requires a prompt judicial determination of probable cause for continued detention as soon as the processing incident to arrest is completed. This processing usually takes a few hours at most (in Washington, D.C., it was found to take, at most 1-1/2 hours). *Lively v. Cullinane*, 451 F.Supp. 1020 at p. 1004 (D.D.C. 1978). Defendants, however, suggest that the determination must depend on the days when the court is open, rather then [sic] when the processing incident to arrest is completed. Thus, assuming that, at the outside, jail booking is completed within eight (8) hours of arrest, the arrestees must still usually wait for the second day (or third, or in the case of a weekend with a holiday, the fifth or sixth day) following arrest for a judicial appearance, provided, of course, that the court is open that day. Then, since the arrestee is a felony arrestee, the arrestee *must demand a probable cause hearing*, which the arrestee will then receive within ten (10) days after the arraignment.

The *prompt* probable cause for continued detention hearing required by *Gerstein* is generally held to be required within 24 hours of arrest. *Bernard v. City of Palo Alto*, 699 F.2d 1023 at p. 1025 (9th Cir. 1983); *Sanders v. City of Houston*, 543 F.Supp. 694 at p. 702 (S.D. Tex. 1982); *Dommer v. Crawford*, 653 F.2d 289 at p. 289 (7th Cir. 1981) (48 hours if Sunday); *Lively v. Cullinane*, 451 F.Supp. 1020 at p. 1004 (D.D.C. 1978) (1-1/2 hours); but, See *Williams v. Ward*, 845 F.2d 374 at p. 387 (2nd Cir. 1988) (72 hours).

The judicial determination required by *Gerstein* only goes to *probable cause for continued detention;* it does not

address probable cause for arrest, nor does a "No P.C." finding, in a *Gerstein* determination, require that charges be dismissed, which is the purpose of hearings under Penal Code § 991 (and § 859 the felony preliminary hearing procedure). The concern in *Gerstein* is that an arrestee not be *detained* so long that the detention will interfere with employment and family relationship without a *prompt judicial determination of probable cause for such continued detention*. This concern cannot be met with a determination 4 or 16 days after arrest, but, generally, has been held to require such a determination within 24 hours after arrest (including the Ninth Circuit in *Bernard*). It must also be noted that *Gerstein requires* a *universal* determination rather than the practice of allowing a hearing *if requested*. In the Passover service, Four Sons ask questions: the Wise Son, the Simple Son, the Evil Son, and *The Son That Does Not Know To Ask*. For more than 3,000 years, the Judeo-Christian tradition of our society has recognized the special concern that our society must have in providing its benefits even (especially) to the members of society who are too shy, underprivileged, unable to understand, or to function without our help. This is why *Gerstein* requires universal determination, even for the arrestee who doesn't know enough to ask, and for whom the *Gerstein* protections may be the most beneficial.

Riverside County's interpretation of 48 hours is not the same as Los Angeles County's (or Orange County's or San Bernardino's or every progressive County in the State of California) which have adopted Judge Hupp's opinion in *Youngblood v. Gates*, 200 Cal.App.3d 1302 (1988), and are conducting felony arraignments *a full day earlier than Riverside County*. Plaintiffs ask that the court take judicial

notice of the arraignments schedule of San Bernardino County (EXHIBIT 5 to this reply memo) and compare it to defendants' 101, showing *the extra day* taken by Riverside County. While plaintiffs are gratified that defendants have added a notice that probable cause *for arrest* hearings *are available* (obviously in response to this litigation), the claim that probable cause hearings, 4, 5, or 16 days after arrest complies with *Gerstein* is simply specious.

In *Re Walters*, 15 Cal.3d. 738 (1976) and Penal Code § 991 apply to *misdemeanor* arrestees. Virtually all the warrantless arrestees held in jail, who do not have other warrants or holds, are *felony arrestees*.

II. CAN NO COURT ENFORCE *GERSTEIN* THROUGH INJUNCTIVE RELIEF?

Plaintiffs' counsel, and the court, thought that the *Lyons* objections were long gone in the case. At the commencement of this lawsuit, defendants filed a 12(b)(6) motion which admitted that a class would satisfy *Lyons v. City of Los Angeles*, 461 U.S. 95; 75 L.Ed.2d 675; 103 S.Ct. 1660 (1983), but objected to the named plaintiff, since he had been released from the Riverside County Jail before suit was filed. Plaintiffs' counsel suggested that *Lyons* did not apply in this case and the named plaintiffs were appropriate. Plaintiffs' counsel also suggested that it would be easy enough to add incarcerated named plaintiffs' who were warrantless arrestees held without a judicial determination of probable cause for continued detention. The court favored the latter approach. The court, however, subsequently refused to provide plaintiffs' counsel with an order allowing them access to newly

arrested prisoners in the Riverside County Jail. Defendants refused access. Defendants even refused access when the relatives and wives of prisoners requested that plaintiffs' counsel be allowed to see prisoners, in violation of California law and the Constitution. Nonetheless, in spite of all of the obstructions, legal and physical, the Riverside County Jail put in plaintiffs way, there are now named plaintiffs who were prisoners in the Riverside County Jail, warrantless arrestees, who had been held more than 36 hours without a judicial determination of probable cause for detention (or a first appearance before a judge), at the time the Second Amended Complaint was filed.

Now defendants claim that *no plaintiff has standing* and therefore *no court can enforce Gerstein through injunctive relief*. In effect, the defendants claim that *Gerstein* can be enforced by hundreds of successful damage actions a year against the County of Riverside, but that *one* injunctive relief action is not possible. As a practical matter, given the proof before the court, this cannot be the law, and in the Ninth Circuit, is not. *Smith v. City of Fontana*, 818 F.2d 1411 (9th Cir. 1987); cert. denied ___ U.S. ___, 1083 S.Ct. 311; 986 L.Ed.2d 269 (1987).

Further, there is no *Lyons* issue once a class is properly certified:

" . . . [P]laintiffs seeking equitable relief from asserted unconstitutional policy practices can satisfy this case or controversy requirement by alleging enough specific instances of past unconstitutional behavior to establish a 'persistent pattern of police misconduct' from which a future threat can be inferred. . . . [P]laintiffs

seeking equitable relief can alternately satisfy this case or controversy requirement of likely future injury by both alleging the existence of an unconstitutional policy and credibly alleging that they face a realistic threat from the future application of the City's policy." *Smith v. City of Fontana*, 818 F.2d 1411 at pp. 1421, 1422 (9th Cir. 1987) (wrongful death of black citizen at hands of police); cert. denied ___ U.S. ___, 108 S.Ct. 311; 98 L.Ed.2d 269 (1987).

And, where plaintiffs have equitable and damage claims where the two claims involve the same operative facts and legal theory. *Id* at p. 1423, cf. *Gates v. Ackerman*, 746 F.2d 614 (9th Cir. 1984, strip search of woman arrested for failing to pay parking tickets).

A plaintiff who has been denied a prompt probable cause hearing has a live § 1983 claim. *King v. Massarweh*, 782 F.2d 825 at p. 828 (9th Cir. 1986).

Judge Ferguson's brilliant and incisive opinion in *LaDuke v. Nelson*, 762 F.2d 1318 (9th Cir. 1985) clearly distinguishes *Lyons* in the Ninth Circuit where there is an *admitted official "policy and practice"* and a class.

"The district court found that the defendants engaged in a standard pattern of officially sanctioned officer behavior . . . violative of the plaintiff's constitutional rights . . . The Supreme Court has repeatedly upheld the appropriateness of federal injunctive relief to combat a 'pattern' of illicit law enforcement behavior." *Supra*, 762 F.2d at p. 1324 (cites omitted)

"For standing purposes, this court's inquiry must focus on the standing of the *class* to seek equitable relief." *Id*. at p. 1325.

Note that even post-*Lyons*, an *individual* had standing to successfully seek injunctive and declaratory relief against Cal. Pen. Code § 647 (e) (identification). *Kolender v. Lawson*, 461 U.S. 352 at p. 355, fn 3; 75 L.Ed.2d 903 at p. 908, fn 3, 103 S.Ct. 1855 (1983).

Plaintiffs' counsel need not remind the court that this is a case where *defendants* submitted a full settlement plan, which the court approved, only to withdraw it a month later. In raising *Lyons* in a class action, defendants are truly grasping at straws.

III. 1987 ARREST AND DETENTION RECORDS

Plaintiffs requested a sample of arrest and detention records including a holiday and weekend from Riverside County. "For every warrantless arrestee booked on November 11, 12, and 13, 1987, not also held on a warrant, parole or probation violation . . . " (EXHIBIT 6) These records were produced early in 1988. These are the same sort of records requested from Orange County and San Bernardino County in the similar suits before this court (and which were used in the Orange County case and *stipulated to* by San Bernardino County). Riverside County now has the bad faith effrontery to argue that arraignment procedures have changed since November of 1987 when on March 1, 1989, the testimony of the Central Jail Commander *under oath* as to *present* time periods before arraignment was the same as those found in the November 1987 sample. (Deposition of Capt. Andrews, Commander of Riverside Central Jail at page 7, lines 16 through page 9, line 6) (EXHIBIT 8). Riverside County

has been obstreperous, and difficult, has denied plaintiffs' counsel access to its prisoners in violation of state law and the Constitution, has interposed and continues to interpose specious legal and factual arguments. This, however, is simply an attempt to mislead the court with an incorrect factual statement.

CONCLUSION

Gerstein is the law of the land. Riverside County has attempted to avoid of its obligations to provide prompt probable cause for continued detention determinations from the day this lawsuit was filed. The present arguments are simply more of the same obfuscation. The Constitution of the United States does apply to Riverside County. Plaintiffs ask that this court now enforce *Gerstein* and enter the requested preliminary injunction.

DATED: April 11, 1989

/s/ Richard P. Herman
RICHARD P. HERMAN
JAMES GLICK
PAUL W. COMISKEY
DAN STORMER
Attorneys for Plaintiffs

EXHIBIT 5

TIME LIMITS FOR RETENTION

An inmate must be arraigned no later than the second court day after the arrest. The time shown in this chart is *absolute;* there will be no extensions. It is the responsibility of the *ARRESTING AGENCY* to keep track of their arrests and cause the release of those inmates not filed on.

Day of Arrest	Time of Arrest	Must be Arraigned by Time & Day
MONDAY	0001 to 2400 hrs.	1700 hrs., – Wednesday
TUESDAY	0001 to 2400 hrs.	1700 hrs. – Thursday
WEDNESDAY	0001 to 2400 hrs.	1700 hrs. – Friday
THURSDAY	0001 to 2400 hrs.	1700 hrs. – Monday
FRIDAY	0001 to 2400 hrs.	1700 hrs. – Tuesday
SATURDAY	0001 to 2400 hrs.	1700 hrs. – Tuesday
SUNDAY	0001 to 2400 hrs.	1700 hrs. – Tuesday
ANY HOLIDAY	0001 to 2400 hrs.	When a holiday occurs following the arrest, add an additional court day when computing the day and time for arraignment

EXHIBIT 6

(Caption Omitted In Printing)

CASE NO. CV 87-5597 RG

REQUEST FOR PRODUCTION

TO DEFENDANTS COUNTY OF RIVERSIDE and COIS BYRD and THEIR ATTORNEYS OF RECORD: Plaintiffs request that you produce the following documents at the office of plaintiffs' lead counsel, RICHARD P. HERMAN, located at 229 Marine Avenue, Balboa Island, California, on January 12, 1988 at 10:00 a.m., pursuant to the Federal Rules of Civil Procedure.

1. The Daily Report of Jail Admissions for November 11, 12 and 13, 1987.

2. For every warrantless arrestee booked on November 11, 12 and 13, 1987, not also held on a warrant, parole or probation violation, please produce those records which would show:

a. The date and time of the arrest.

b. Charge.

c. Booking date and time (at Jail).

d. Arresting agency.

e. Date and time of first court appearance (or video arraignment).

f. Date and time actually released.

g. Reason for release (bail posted, O.R., no complaint, etc.).

3. The daily population counts showing the number of inmates in the Riverside County Jail on November 11, 12 and 13, 1987.

A compilation, as an alternative, would be satisfactory provided the original records are made available for inspection and review (samples enclosed). Plaintiffs' counsel are also more than willing to try to work out any technical problems which might arise.

DATED: December 3, 1987

/s/ Richard P. Herman
RICHARD P. HERMAN
HARRY LERNER
JAMES GLICK
PAUL W. COMISKEY
Attorneys for Plaintiff

* * *

(Affidavit Of Service Omitted In Printing)

* * *

Inspection Date: 12/2/81

By: G.C. p.3

FELONY ARRAIGNMENTS

CASE NO.	War-rant	ARREST Date	Time	Charge	Booking Time	Follow-Up	FILING Date Exec.	Date Filed	Time Filed	Charge	1st Court Date	BAIL AMOUNTS LAPD	DA/Warr.	Court	Days Transp.	COMMENTS
Dec. 10																
n.00108		11/23/87	1130	664/ 211 PC	1410	11/24/87	11/24/87	11/25/87		664/211 288(a)(c) 245(a) PC	11/25/87	22,500	22,500	20,000		
A900104		11/23/87	0210	459 PC	0450	11/24/87	11/24/87	11/24/87		459 PC	11/25/87	5,000	5,000			
A083743		11/24/87	1515	211 PC	1725	–	11/27/87	11/27/87		211 PC	11/27/87	1,000	7,500			
Dec. 11																

		ARREST						FILING				BAIL AMOUNTS				
CASE NO.	War-rant	Date	Time	Charge	Booking Time	Follow-Up	Date Exec.	Date Filed	Time Filed	Charge	1st Court Date	LAPD	DA/Warr.	Court	Days Transp.	COMMENTS
A083669		11/9/87	1730	470 PC	2100	11/12/87	11/12/87	11/12/87		487(1) 470 487.3 496	11/12/87	1,000	75,000			
											426 PC 11350 HS	hold pending income				
A083749		11/24/87	2200	148.1 (B) PC	2255	11/25/87	11/30/87	11/30/87		148.1(b) 584 PC	11/30/87	5,000	5,000			
[illegible]		[illegible]	1305	11360	1530	–	2/10/87	2/11/87		11360	2/11/87	1,000	1,000	OR		

Inspection Date: 10/13/81

By: Don Cook

MISDEMEANOR ARRAINGNMENTS

		ARREST					FILING				BAIL AMOUNTS					
CASE NO.	War-rant & re-book	Date	Time	Charge	Booking Time	Follow-Up	Date Exec.	Date Filed	Time Filed	Charge	1st Court Date	LAPD	CA/Warr.	Court	Days Transp.	COMMENTS
81-175428	✓	1-17-81	1715	11359A H&S	1810		1-19-81	1-19-81		11357C H&S	1-20-81	1,000	500			
175429	✓	1-18-81	1950	459	2340		1-19-81	1-19-81		647g 602j	1-20-81	5,000	500			
[illegible]	✓	1-15-81	1230	12020A	1425	1-16-81	1-19-81	1-19-81		12020	1-19-81	500 or 5,000	–			
175473	✓	1-14-81	2020	496	2225		1-19-81	1-19-81		12025B 12031A	1-19-81	6,000	–			
175483	✓	1-14-81	1730	11350A H&S	2045		1-19-81	1-19-81		11550 H&S 4143A B&P	1-19-81	2,500	–	500		

		ARREST					FILING					BAIL AMOUNTS				
CASE NO.	War-rant	Date	Time	Charge	Booking Time	Follow-Up	Date Exec.	Date Filed	Time Filed	Charge	1st Court Date	LAPD	DA/Warr.	Court	Days Transp.	COMMENTS
175485	✓	1-15-81	1730	10851 VC	1900		1-19-81	1-19-81		10851 VC	1-20-81	1,000	500	200		
175486	✓	1-18-81	1600	11378A H&S	1925		1-19-81	1-19-81		11377 H&S	1-20-81	1,500	500			
175487	✓	1-18-81	1600	11377A H&S	1920		1-19-81	1-19-81		11377 H&S	1-20-81	1,500	500			
175494	✓	[illegible]		664/	0330		1-19-81	1-19-81		12025b	1-20-81	No	500	1,000		

EXHIBIT 7

(Caption Omitted)

DEPOSITION

OF

GROVER TRASK

* * *

(Appearance Of Council Omitted)

* * *

[p. 3] INDEX

PAGE

Grover Trask

EXAMINATION BY MR. HERMAN 4

EXHIBITS

Defendants' Exhibit 101 6
A one-page chart entitled "Arrested – Must Be Arraigned By"

[p. 4] Riverside, CA Wednesday, March 22, 1989

Grover Trask,

Called as a witness, having been sworn,

Testified As Follows:

EXAMINATION

(BY MR. HERMAN)

Q. Will you state your name for the record.

A. Grover Trask.

Q. What is your employment, Mr. Trask?

A. I'm the district attorney to the County of Riverside.

Q. How long have you been the district attorney for the County of Riverside?

A. I've been the district attorney for seven years.

Q. Are you familiar with the procedure for the first hearing of a person who is arrested on a criminal – in a criminal case?

A. In California, yes.

Q. And in Riverside County, for a person who is arrested not other than on a warrant, when does that [p. 5] first hearing occur?

A. When a person is arrested and booked into the county jail – well, let me clarify. What hearing are we talking about? Are we talking about arraignment?

Q. The very first hearing that a prisoner ordinarily gets.

A. The first hearing would be arraignment, and that would be – in-custody arraignments are done under 825 of the Penal Code, which is within 48 hours after the individual has been arrested, sometimes extended to 72 hours if the arrest occurs over the weekend. But that's the first time that the defendant is brought into court.

Q. Are there occasions when that first hearing occurs later than 72 hours after arrest?

A. Well, if the defendant is out of custody, yes. He won't make an appearance until sometimes weeks and maybe sometimes months after that. If he is in custody and he is not arraigned or does not make that appearance, he is required to be released from custody.

Q. If someone is arrested on a Thursday, for example, when is that person normally arraigned?

A. He would be arraigned either – if they could get the paperwork done, Friday. If not, the [p. 6] following week on a Monday.

Q. How many hours after arrest would that be?

A. Well, under the calendar or court case, it would be dependent on the time.

MR. BELL: The question is vague because we don't know the circumstances of what you are referring to in your question.

MR. HERMAN: Okay.

Q. Suppose the prisoner is arrested at 9 a.m. on a Thursday. When is the latest time that prisoner can be arraigned?

A. The procedure that we use in this county and what the jail looks at is what was put together under 825 of the Penal Code, which shows the dates Sunday through Saturday. If he was arrested before 5 p.m. on a particular date, it then shows what time procedurally that person must be arraigned to comply with 825 of the Penal Code.

Probably the best way to explain that to you is maybe can we attach this to the record.

MR. HERMAN: Do you want to make that 101?

MR. BELL: Sure.

MR. HERMAN: Off the record.

(Defendant's Exhibit 101 was marked for identification.)

[p. 7] Q. Back on the record.

And is there a procedure for a probable cause for detention hearing for an in-custody prisoner?

A. Under California's procedure, at the time of arraignment on an in-custody inmate on misdemeanor charge under 991 of the Penal Code, the defendant is advised at the arraignment time that he has a right to a hearing on affidavits and written police reports, and there is no similar provision for a felony in-custody, but there is 859(B) of the Penal Code that sets out a whole procedural due process guideline with regards to felons and probable cause hearings in California which we refer to as the preliminary hearing process.

Q. Are you familiar with the Orange County system of probable cause hearings?

A. I'm familiar with the fact that they have a federal court order requiring them to hear or have hearings within a specified period of time, but other than that, I'm not real familiar with the details or how it came about or what the reasons were for that, no.

Q. Are you familiar with what actually goes on at those hearings and how they are conducted?

A. From what I understand, basically a defendant [p. 8] is brought in and a hearing officer reviews police reports and affidavits and makes a determination as to probable cause sometime before the actual statutory arraignment under 825 of the Penal Code.

Q. And how does that differ from the system as it occurs in Riverside County?

A. Well, first of all, it differs because we don't have any hearing that precedes our arraignment within the statutory period of time under California law.

And secondly, as to – I think we have to make a distinction as to misdemeanors and felonies because under the arraignment process under misdemeanors under 991, the defendant does have a right at the arraignment time to have that particular hearing. And again, as to felonies, it occurs for in-custody defendants within ten days after the arraignment. And that procedure is not only in Riverside County but it occurs in every county in every criminal court throughout the state of California.

Q. How many in-custody misdemeanants are there that actually get to arraignment and custody in Riverside County in an average week?

A. Well, again, I will –

MR. BELL: Just don't guess.

[p. 9] A. Right now with the jail system the way it is right now, we basically have room just for mostly felons, and very few misdemeanants are actually in custody at the time of arraignment. There may be a few. You would have to check with the jail on that, but primarily our in-custody felons are in-custody felons, not misdemeanants.

Q. Are you familiar with the decision in Gerstein versus Pugh?

A. Yes.

Q. If we call the Orange County a Gerstein system or responsive to Gerstein, are there other counties in California that you are familiar with that use a system that is intended to respond to Gerstein?

MR. BELL: Wait. Are you saying –

A. There is only –

MR. BELL: Please. Are you saying that – in your question that the Orange County system is the only system in California that would be in compliance with Gerstein?

MR. HERMAN: No, I'm not. I'm just saying if we call the Orange County system a Gerstein system.

MR. BELL: A Gerstein system? Okay.

MR. HERMAN: Are there other Gerstein systems in other counties that the deponent is [p. 10] familiar with?

MR. FERGUSON: The question can't be answered unless you want to put on the record supposedly Orange County does have a Gerstein system.

MR. HERMAN: That's what I said.

MR. FERGUSON: Well, you didn't. Let's make it a hypothetical question, then, and you will get a hypothetical answer.

A. I look at it two different ways. When you talk about Gerstein hearings, as I read Gerstein, it requires probable cause hearings for in-custody defendants without unnecessary delay. California procedure has set up a system and the California Supreme Court has ruled on

that that the preliminary process is a Gerstein hearing. It complies with the United States Constitution.

The type of hearing that you are talking about that's in addition to what we have now in terms of the preliminary hearing – in addition to the arraignment under 991 – the kind that you are talking about in Orange County, the only other county that I know that is in a position that is doing something in addition would be Santa Clara County. And that's a telephonic type of arrangement, as far as I understand.

Q. Have you actually observed the Santa Clara [p. 11] County system?

A. No.

Q. Are you aware of any other system other than those two either in the State of California or elsewhere?

MR. BELL: Any other systems of what?

MR. HERMAN: Gerstein systems.

MR. FERGUSON: Other than what is followed in the County of Riverside?

MR. HERMAN: No.

A. The answer is no.

MR. BELL: Well, wait a minute. I'm still not clear on this.

MR. HERMAN: I don't care.

MR. BELL: I do. I represent the County. I do care.

MR. HERMAN: I will strike the question.

MR. BELL: The problem, frankly, is that the question assumes that what's done in the County of Riverside is not in compliance with Gerstein, and we won't concede that.

MR. HERMAN: I will withdraw the question.

MR. FERGUSON: And the answer.

MR. HERMAN: And the answer, sure.

Q. Is it fair to state your position that it's [p. 12] your opinion that 825 of the Penal Code and 991 and that whole arraignment process are sufficient to satisfy the Gerstein requirements?

A. Yes.

Q. Have you discussed this with anyone other than with Mr. Bell and Mr. Ferguson, your counsel?

A. Yes.

Q. Who have you discussed that with?

A. I first actually discussed this matter probably approximately three months ago when Pam Anderson from the county counsel had called me and indicated that –

MR. BELL: Well, don't go into conversations with her, because then she is in a representative capacity for the county. So –

A. Anyway, I discussed the matter with her first of all and found concern with regards to what was occurring. And then I contacted the attorney general's office

and spoke to Harley Mayfield from the San Diego office and also to Arnold Overroye. O V E R R O Y E, I think, is the way he spells his last name.

And also we had a discussion at the California District Attorneys' Association at the Board of Directors and with the Executive Director with regards to the concerns that would impact every [p. 13] county in the State of California.

In addition, I have discussed the matter with the Board of Supervisors and the Sheriff of this County.

Q. Had you come to the position that the arraignment procedure satisfied Gerstein three months ago, or is this something you came to more recently?

A. I really wasn't involved in the process until about three months ago, and when I heard what was occurring with regards to the additional probable cause hearing and what I considered the cost to the county and also the concern that it was an unnecessary process, that's when I read Gerstein again and came to the conclusion that it's not something that I think under the Fourth Amendment of the Constitution is stipulated to agreeing to, and so I spoke my mind on that issue.

Q. Assuming that an order were entered as to Riverside County that's similar to the Orange County order, are there problems that you foresee in implementing such an order?

MR. BELL: What do you mean by problems?

MR. HERMAN: I don't know. What else can I say? Any difficulties, any impediments.

MR. FERGUSON: To the district attorney's office or to the county?

[p. 14] MR. HERMAN: To the county.

MR. BELL: I can perceive problems, and that's the problem with it. That's not the question.

MR. HERMAN: You are not the deponent.

MR. BELL: I realize that. What I am saying is anybody can answer that question. There is problems connected with it.

MR. HERMAN: What I want to see is his specific answer for the district attorney.

MR. BELL: Go ahead.

A. As far as problems in the sense that it would create additional burdens on law enforcement and potentially could indirectly impact our relationship in terms of getting the work done. I mean, it would create another – potentially other problems with the processing of the cases.

But as far as if your question is problems if the order can be complied with, it can be complied with.

Q. Has the county prepared for compliance with such an order?

A. I don't know.

Q. Would your office have a part in getting ready to comply? For example, in Orange County the district attorney's office was largely responsible for the way the form, the probable cause [p. 15] determination form

which went to the police officers and the police departments, was set up.

A. Right now I believe county counsel would be the one that would be preparing that form and probably discussing that with us. The only – it would only indirectly impact on our office, and the only concern that we would potentially be concerned about is once an officer does a summary in probable cause form, we are going to have to require them in addition to that for our purposes of handling the case, go back and file detailed written police reports. And once you have a summary of something, built-in inconsistencies that can develop would be somewhat of a concern on our part. But other than that indirect concern and the concern in terms of where the money is going to come to pay for the additional hearing officers, we could comply.

Q. In your discussions with the people in the attorney general's office, did they agree with your position as you stated it on probable cause hearings?

A. They agreed with my position, but their concern was that an appropriate record be developed in order for them to make any specific comments.

With regards to whether or not it would be a viable, appealable concern on their part, what the issues were as to the constitutionality of 859.1, 859 [p. 16] (B) and 991 and 825 of the Penal Code.

MR. HERMAN: Nothing further.

MR. BELL: Let me talk to counsel.

MR. FERGUSON: Let's take a second. Let's go outside for a second.

(Discussion held off the record outside the conference room between Mr. Bell and Mr. Ferguson.)

MR. BELL: No questions.

• • •

(Stipulation And Certification Omitted)

• • •

	ARRESTED	MUST BE ARRAIGNED BY
SUNDAY:	Any time	5:00 P.M. Wednesday
MONDAY:	Before 5:00 P.M. (1700)	5:00 P.M. Wednesday
	5:01 P.M. to Midnight 1701 2400	5:00 P.M. Thursday
TUESDAY:	Before 5:00 P.M.	5:00 P.M. Thursday
	5:01 P.M. to Midnight	5:00 P.M. Friday
WEDNESDAY:	Before 5:00 P.M.	5:00 P.M. Friday
	5:01 P.M. to Midnight	5:00 P.M. Monday
THURSDAY:	Before 5:00 P.M.	5:00 P.M. Monday
	5:01 P.M. to Midnight	5:00 P.M. Tuesday

	ARRESTED	MUST BE ARRAIGNED BY
FRIDAY:	Before 5:00 P.M.	5:00 P.M. Tuesday
	5:01 P.M. to Midnight	5:00 P.M. Wednesday
SATURDAY:	Any time	5:00 P.M. Wednesday

NOTE: If a legal holiday (a day when the courts are closed) occurs on the day of arrest, the day of arraignment, or on any day in between, the arraignment may be postponed one (1) additional day.

Defts 101
Date 3/22/89
Depo of Trask
Page 1 of 1

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RE: McLaughlin v. County of Riverside, et al.
Our File No. 19-82
USDC Case No. CV 87-5597 RG

Dear Counsel:

Please be advised that Grover Trask has executed the original of his deposition under the penalty of perjury. The following are corrections to his deposition:

Page 15, Line 26	Strike "859.1"
Page 16, Line 1	Change "(B)" to "(b)".

If you have any questions regarding the above, please contact our office at your convenience.

Very truly yours,

FIDLER & BELL

/s/ Kathy Hollosi
Kathy Hollosi
Secretary to
MICHAEL A. BELL

MAB:kh

Enclosure

EXHIBIT 8

(Caption Omitted In Printing)

DEPOSITION

OF

FRANK GAYLE ANDREWS

• • •

(Statement of Appearance Omitted In Printing)

• • •

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EXHIBITS IDENTIFIED

(Retained By Counsel)

PLAINTIFFS' 1	16
A document entitled stipulated order, Case No. CV 84-8647 RG(KX)	
PLAINTIFFS' 2	9
A document entitled "SUPPLEMENTAL EXHIBITS, RE: CLASS CERTIFICATION," Filed January 22, 1988, Case No. CV 87-5597 RG.	

[p. 4] RIVERSIDE, CA Wednesday, March 1, 1989

Frank Gayle Andrews,

Called As A Witness, Having Been Sworn,

TESTIFIED AS FOLLOWS:

EXAMINATION

(BY MR. HERMAN)

Q. Would you state your name for the record, please.

A. Frank Gayle Andrews.

Q. And what is your present employment, Mr. Andrews?

A. I am employed by the Riverside County Sheriff's Department.

Q. What is your position?

A. I am a captain, currently the commander of the Riverside Jail Facility.

Q. And how long have you been the commander of the Riverside Jail Facility?

A. Since November of '87.

Q. How many prisoners are admitted every day to that facility? Let's say yesterday, how many were admitted, if you know?

[p. 5] A. I don't know.

Q. On average, do you know over the last week how many have been admitted?

A. No, not specifically.

Q. Do you have your – do you have a best estimate of a recent – in the last month, what an average would be?

A. No.

Q. Do you have any idea at all how many prisoners are admitted every day to the Riverside County Jail?

A. I can give you a best guess.

Q. Well, a best estimate will do.

MR. BELL: Captain, let me –

Q. This isn't intended to, by the way – I'll say it – it's not intended to set you up, and the purpose of the deposition isn't to make you look silly or to embarass [sic] you. It's only to get information. There's no jury here. There's no judge here. This is just for purposes of the plaintiffs getting information that we can use in this litigation, and it's information we're entitled to. So if you have an estimate, if you have an idea of how many prisoners are admitted every day or as to any question, we're entitled to your best estimate.

If it's just a guess that has no basis at all, and you say that, that doesn't have very much [p. 6] value for us. But I would assume that you have some basis to make an estimate about how many prisoners are admitted every day to your jail.

MR. HERMAN: I am sorry.

MR. BELL: That is – the latter part, if you are going to guess, I can guess or Mr. Ferguson can guess. The point is that an estimate is a statement that is based upon know [sic] facts; in other words, there's a basis in fact for it, and if you have an estimate, give Mr. Herman an estimate, but please do not guess and speculate.

A. It will run between 100 and 150 a day.

Q. And of those –

MR. FERGUSON: Can I have a little clarification? Your question said the jail facility, but there are numerous jail facilities run by the County Sheriff's Department.

MR. HERMAN: I am referring to the jail facility of which the captain is the commander.

Q. Is that what you understood, Captain?

A. Yes, I understand that.

MR. FERGUSON: Just the Central Jail?

MR. HERMAN: That's what he said.

MR. FERGUSON: Well, he could be the commander of all the jails in Riverside County.

MR. HERMAN: He is not.

[p. 7] Q. You are not, are you?

A. No, I am not.

Q. Okay. Of those prisoners who are admitted every day, do you have an estimate of how many of those are what we will call for purposes of this lawsuit warrantless arrestees?

A. No.

Q. Okay.

MR. BELL: Can I have –

MR. HERMAN: Warrantless arrestees.

MR. BELL: I didn't hear the question or the answer, that's all.

MR. HERMAN: Do you want to sit here, Mike? I am serious.

(The record was read as requested.)

Q. If I were a prisoner who was arrested last Thursday, when would I get to – let's assume that I was a warrant – a prisoner who was arrested without a warrant. When would I be arraigned?

A. The following Tuesday.

Q. And if I was arrested last Friday, when would I be arraigned?

A. The following Wednesday.

Q. And if I was arrested the Friday before a three-day weekend, which – where the Monday was a holiday, when would I be arraigned?

[p. 8] A. The following Thursday.

Q. And if I was arrested the Wednesday before Thanksgiving, and that was a four-day weekend, Thanksgiving, when would I be arraigned? That's a tough one.

A. When do the holidays fall?

Q. The holidays would fall Thursday and Friday, and then there would be a weekend.

A. The following Wednesday.

Q. And is that arraignment the first time that the prisoner would see a judge or a judicial officer?

MR. FERGUSON: Objection.

MR. HERMAN: Let's make it a judge.

Q. Go ahead.

MR. FERGUSON: Well, it's speculative. If he saw –

MR. BELL: Well –

MR. FERGUSON: – a judge –

MR. BELL: I don't know what –

MR. FERGUSON: In what context to see a judge?

Q. Is that the first time that that prisoner would physically see or be brought in front of a judge?

MR. BELL: Here's the problem with that question. It's – it's possible that the judge is [p. 9] down in the jail visiting a cousin who happens to be a prisoner there. He would see him, and I don't think –

MR. HERMAN: In the ordinary course of events.

A. Yes.

Q. I want to show you an exhibit which we will identify but not mark for the record which I think your counsel is familiar with.

MR. BELL: Yes.

Q. And I have just got a little tab on there that's marked Exhibit 2, and that's the number that I intend to use on that for all of these proceedings.

Are you familiar with that exhibit? Have you seen that before, Captain Andrews?

A. No, I have not.

Q. Have you seen the break-out charts of the arrestees and –

A. No, I have not.

Q. You haven't seen that compilation?

Are you familiar with – referring to what is internally marked Exhibit B of that Exhibit, can you tell me what that is?

A. Yes, sir. They appear to be copies of the daily admissions report.

Q. Okay.

[p. 10] A. Daily jail admissions report.

Q. And are those still prepared?

A. Yes.

Q. And are they prepared in a similar manner?

A. Yes, they are.

Q. Are – those particular ones are, I guess, about a year old, aren't they? Are there dates on those?

A. Yes, November of '87.

MR. BELL: So we have the record clear, what we are referring to are the reports that were submitted to you in connection with the request to produce documents in the class certification?

MR. HERMAN: Yes.

Q. Are you designated to be the commander of the new jail?

A. Yes, sir.

Q. And you also command the old jail for whatever functions that has?

A. It is one in the same.

Q. Okay. What is the rated capacity for – of the facility, of your facility?

MR. BELL: The existent facility?

Q. Strike that. What's the board of corrections' rate of capacity of your existing facility?

A. Three hundred fifty-seven.

[p. 11] Q. What's the self-rated capacity?

A. Four hundred and sixteen.

Q. And how many actual prisoners are there in the jail either today, yesterday, whatever you have got a figure in mind for?

A. At 8:00 this morning, there were 650-some prisoners in that facility.

Q. Now, how many – how many actual beds are there in that facility?

A. Four hundred and sixteen.

Q. So that if, for example, at 9:00 o'clock in the morning I were arrested and brought in, and let's assume that I am a warrantless arrestee, would I receive a bed?

MR. BELL: What's the relevancy of this?

MR. HERMAN: Relevance as to conditions that the warrantless – that's one of the reasons why we have

to do this is to squeeze them out of the system or get to – get innocent ones out first because of – because, one, it's required, but also because there is some urgency to it because of the conditions in which they are housed. I am real brief on this, Mike.

MR. BELL: I just don't want to go into the jail state court case which Judge Gadbois has already said he is not going to grasp.

[p. 12] MR. HERMAN: Short stuff.

MR. BELL: Okay.

Q. Do I get a bed?

A. An honest answer to your question is yes and no.

Q. All right. Can you explain that?

A. The jail population is divided up into various housing classifications. Those housing classifications occupy housing units. It is possible to have more inmates in the facility than existing beds, and still have bed space available for a particular classification of an inmate.

If you fall within a classification that has existing bed space available, yes, you will have a bed. If you do not, no, you will not have a bed.

Q. Okay. In fact, some of those cells actually have triple bunks in them, don't they, captain?

A. All of the cells in our facility have triple bunks in them on the male section.

Q. What's the capacity of the new jail, the Board Of Corrections' rate of capacity for the new jail?

A. Four hundred eighty.

Q. Is that new jail double-bunked?

A. It will be, portions of it.

Q. Are you involved in anything which would give you an information about the number of arrestees [p. 13] which you expect per day, let's say, the next year or the year after that?

MR. FERGUSON: Objection.

MR. BELL: Depends on how many crooks are there – are out there.

MR. FERGUSON: It's kind of vague. You can get two different meanings.

MR. HERMAN: I will come back –

MR. FERGUSON: You can see different meanings from your question.

MR. HERMAN: Strike that.

Q. Are you involved in any jail planning activities, captain?

A. No.

Q. Who is involved in jail planning activities?

A. The corrections division, planning and research unit.

Q. And who are the members of that unit?

A. At the current time, it is Lieutenant Dave Ridgeway, Sergeant Mary Bauser, (phonetic spelling) and there

are other individuals that are utilized from time to time to gather information for those two individuals responsible for preparing the needs assessments.

Q. Who does Lieutenant Ridgeway report to?

A. He reports to me.

[p. 14] Q. Okay. And do you see those reports that Lieutenant Ridgeway prepares?

A. No, I have not. They have gone directly to Chief Smith.

Q. And what is Chief Smith's position?

A. Chief Deputy in charge of the entire corrections division within the Riverside County Sheriff's Department.

Q. In the year and few months that you have been the commander of the Riverside jail facility, have you noticed an increase in the number of prisoners admitted on a daily basis?

A. No.

Q. Have you noticed a decrease?

A. There has been a slight decrease, yes.

Q. To what do you attribute that?

MR. FERGUSON: Less crime. I mean, what's the relevancy of that?

MR. HERMAN: It can be a different facility. It can be – it can be – there are a lot of – if the captain knows.

MR. FERGUSON: Well, what he contributes it to is not relevant. If you want to –

MR. HERMAN: Unless he knows. I mean, is there something – I mean, why jump on every question? If the captain knows –

[p. 15] MR. FERGUSON: Dick, if you –

MR. HERMAN: If the captain knows or has some reasonable basis for a response to that question, I am entitled to ask him so I can get an answer. Numbers are important. Numbers are always important.

MR. BELL: That question I think is the proper one, if you know.

A. No, I don't know.

Q. Okay. Have you – how long have you been employed with the sheriff's department, Captain?

A. Twenty-three years.

Q. And have you worked the branch jails in those 23 years?

A. No.

Q. Before you were appointed captain of the Riverside Jail – the commander of the Riverside jail facility, what was your employment with the Sheriff's department?

A. I was a Lieutenant, and at that time I was the commander of the Indio jail facility.

Q. Okay.

MR. BELL: That's where I have seen you. I have tried cases in Indio.

Q. And before you were the commander of the Indio jail facility, what was you position?

[p. 16] A. Lieutenant, Sergeant, Investigator, Deputy, all in field services.

Q. Okay. What were the obligations of filed services? What do the field services do?

A. Kept down breaches of the peace, investigated criminal acts.

Q. Patrol work?

A. Yes.

Q. Okay. I am going to show you a copy of an order which we have all seen. Maybe Pete hasn't seen it – have you ever seen that? – which I have identified as Exhibit 1, but which we will not mark for purposes of this deposition. It will be Exhibit 1 throughout all of these proceedings.

MR. HERMAN: Forever.

MR. BELL: Okay. For the reporter's understanding, the federal rules, once you mark something in a deposition, that's the exhibit number. It keeps throughout the case, and you have got to keep track of the exhibit numbers. That's what he's talking about.

MR. FERGUSON: This is the Orange County case?

MR. HERMAN: That's the Orange County order.

MR. BELL: Okay. Do you want to show it [p. 17] to him?

MR. HERMAN: Sure.

Q. Captain, have you seen that order?

A. I believe I have, yes.

Q. And have you discussed that order with anyone other than your attorneys?

A. Yes.

Q. And with whom have you discussed that order?

A. Chief Smith, Pam Anderson from County Counsel's office.

Q. Other than your attorneys. I can't ask you what you say to your attorneys. That's privileged.

MR. BELL: At this point, just identify who the individuals are.

A. That would have been the extent of it.

Q. And what were the natures of your discussions with Chief Smith?

MR. FERGUSON: I am going to object as being completely irrelevant, outside the scope of this lawsuit, and outside any parameters of the discovery rules of 26 –

MR. BELL: It may be privileged because I don't know – it may be privileged.

MR. HERMAN: Do you want to consult with your client and find out if it's privileged?

MR. BELL: Yeah. Let me just –

[p. 18] MR. HERMAN: Find out if it's privileged.

MR. BELL: Okay.

(Discussion held outside the deposition room.)

MR. BELL: I will assert an attorney-client privilege because the discussion to which he is referring was a conversation between Pam Anderson, Chief Smith, and the witness.

MR. HERMAN: That's legitimate.

Q. Other than discussions with your attorneys, have you, yourself, formulated in your own mind the manner in which you would implement a similar order were a similar order made for Riverside County?

MR. FERGUSON: Could you –

MR. BELL: He, personally?

MR. HERMAN: How he would in his jail.

MR. FERGUSON: Could you repeat the question back, please?

(The record was read as requested.)

MR. FERGUSON: That's irrelevant.

MR. BELL: It calls for a great deal of speculation on his part.

MR. FERGUSON: Who cares?

Q. I only asked if you have done it.

MR. FERGUSON: If he had formulated an [p. 19] opinion how he would implement an order if an order such as this were required in the County of Riverside?

MR. HERMAN: That's the question.

MR. FERGUSON: It's not relevant.

MR. HERMAN: Do you want to let your witness answer the question if he's done it?

Q. I think you can go ahead.

A. No, I have not, because –

MR. BELL: He hasn't asked if you did because. He's just asked you –

Q. Now I will ask, why haven't you, Captain?

A. Simply because there has been no clear-cut direction as to how this order will come down.

Q. If we assume for a second that there is an order which requires – strike that.

Have you observed the way hearings are conducted in the Orange County Jail?

A. Yes, I have.

Q. If we assume for purposes of this question that hearings will be similar to those in the Orange County Jail, is there a place available to conduct them in the Riverside County Jail?

A. No, there is not.

Q. Is there a place available to conduct them in Indio?

[p. 20] A. No.

Q. Is there a place available to conduct them in the new jail?

A. No.

Q. How difficult – well, strike that.

Is it your testimony that no space could be made available to conduct similar hearings?

MR. FERGUSON: Objection; misstates his testimony.

MR. BELL: It's argumentative in form.

MR. HERMAN: I know. i am asking him.

Q. Go ahead.

A. May I have the question again, please?

Q. Sure.

MR. BELL: Please, why don't you rephrase it, because his testimony is what it is, and it is argumentative in form.

Q. Captain, is there no way that similar hearings could be accommodated in Riverside County?

MR. FERGUSON: I will object as asked and answered. He's really answered the question the best way he can, and it's just not relevant to this lawsuit.

Q. Go ahead.

A. May I have the question again, please?

Q. Sure.

[p. 21] (The record was read as requested.)

MR. FERGUSON: If you can, answer the question.

A. Yes, they could occur in Riverside County.

Q. And how would that happen?

A. It would be my job to implement any order that the court handed down. Now, as to exactly what form that's going to take would be purely speculative on my part.

MR. HERMAN: I think that's it. I have nothing further.

MR. BELL: Do you want to stipulate to –

MR. FERGUSON: I have got some questions.

MR. HERMAN: Sure.

MR. FERGUSON: I want to talk to –

MR. BELL: Sure.

(Brief Recess.)

MR. BELL: All right.

MR. HERMAN: Let's stipulate that the reporter is relieved of her obligations under the Federal Code of Civil Procedure under the Civil Code. The captain may sign under penalty of perjury.

MR. BELL: What do you want to do about custody?

MR. HERMAN: Let's file it. Let's instruct –

• • •

(Stipulation And Certification Omitted In Printing)

• • •

FIDLER AND BELL

March 28, 1989

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RE: McLaughlin v. County of Riverside, et al.
Our File No. 19-82
USDC Case No. CV 87-5597 RG

Dear Counsel:

Please be advised that Captain Frank Andrews has signed the original transcript of his deposition on March 22, 1989, in Riverside, California. Please note that the corrections are attached.

Very truly yours,

FIDLER & BELL

/s/ Kathy Hollosi
Kathy Hollosi
Secretary to
MICHAEL A. BELL

MAB:kh
Enclosure

March 22, 1989

Fidler and Bell
P.O. Box 1665
Riverside, California
92503-1665

Re: McLaughlin v. County of Riverside, et al.
U.S.D.C. Case No.: CV 87-5597 RG
Your File No. 19-82

Dear Mr. Bell:

I have read and signed the enclosed deposition transcript. You requested all corrections on a separate sheet of paper, therefore please cause the following corrections to be made.

1. Page 6 line 12 to read as follows: IT WILL RUN BETWEEN *60* AND *100* A DAY.
2. Page 11 line 2 to read as follows: FOUR HUNDRED *SEVENTY FIVE.*
3. Page 11 line 10 to read as follows: FOUR HUNDRED *SEVENTY FIVE.*
4. Page 12 line 18 to read as follows: ALL OF THE *MULTIPLE* CELLS IN OUR FACILITY HAVE TRIPLE BUNKS IN THEM ON THE MALE SECTION.
5. Page 12 line 22 to read as follows: FOUR HUNDRED *THIRTY TWO.*
6. Page 15 line 15 to read as follows: *YES.*

Very truly yours,

/s/ Frank Gayle Andrews
Frank Gayle Andrews
Facility Commander

• • •

(Affidavit Of Service Of Reply Memorandum Omitted)

• • •

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD LEE McLAUGHLIN, et al,	)	CASE NO. CV87-5597 RG
Plaintiff,	)	PRELIMINARY INJUNCTION
v.	)	
THE COUNTY OF RIVERSIDE, et al,	)	FILED APR 19 1989
Defendants.	)	

This matter having come on for hearing, the court issues this preliminary injunction. As the court has made clear from the commencement of this case, *Gerstein v. Pugh* 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975) is the law of the land (in the Ninth Circuit by *Bernard v. City of Palo Alto*, 699 F.2d 1023 (9th Cir. 1983)). *Gerstein* requires a prompt judicial determination of probable cause for the continued detention of prisoners arrested without warrants. This has generally been held to mean within 24 hours (cf. *Bernard*). In Riverside County the first judicial appearance of a prisoner arrested on a Thursday or Friday occurs the following week. If there is an intervening holiday and a weekend as much as five (5) days of delay after arrest occurs. Such delay before a judicial review of probable cause for continued detention violates *Gerstein*. This court declines to adopt the 24 hour standard, but adopts a 36 hour limit, except in exigent circumstances. This limit was adopted by this court in addressing the same issue in Orange County, *Scott v. Gates*, CV84-8647 RG. Orange County, pursuant to this court's substantially

identical order, has adopted procedures which comply in practice with the mandate of *Gerstein* and *Bernard*.

This preliminary injunction applies to the County of Riverside, its Sheriff, Cois Byrd, and all of their officers, agents, and employees:

1. The County of Riverside, by and through Cois Byrd, its Sheriff, shall initiate and implement the following policy:

> All persons arrested without a warrant and detained in custody *in the Riverside County Main Jail*, located in the City of Riverside, County of Riverside, California, shall, within thirty six (36) hours of the time of the arrest, be taken before a Judge, Magistrate, Court Commissioner, or other authorized judicial officer, for a hearing on determination of probable cause for detention. In the event a prisoner chooses not to attend the proceeding or if circumstances (e.g. hospitalization) render attendance impracticable the hearing may proceed in the absence of the prisoner.

(See *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed. 54 (1975); *Bernard v. City of Palo Alto*, 699 F.2d 1023 (9th Cir. 1983)).

2. The court will retain jurisdiction indefinitely to review the procedures adopted and implemented hereunder, with a view to their compliance in practice with the mandate of *Gerstein* and *Bernard*. This includes the implementation of satisfactory procedures in the Riverside County branch jails as soon as practicable.

3. The above policy shall be effective sixty (60) days after entry of this order.

/s/ Richard A. Gadbois, Jr
RICHARD A. GADBOIS, JR.
United States District Judge

DATED: 4/19/89

[Docket Sheet Caption Omitted]

DATE		87-5597 RG (Kx) PROCEEDINGS
8-24-87	1.	Complt. Issd Sums. Case may be ref'd to mag Kronenberg for discvry.
	2.	Notc of related case.
9-14-87	3.	ORD (KN)(RG) transfrng actn to cal of Judge RICHARD A. GADBOIS for all fur procedgs. cc ptys. Entered on Courtran.
10-9-87	4.	OSC re dmsl fr lack of prosecution. P/S of S/C on all defts satisfactory resp MO C/R none.
10-13-87	5.	Notc of motn & motn to certify class, retbl 11-9-87, 10AM. Pltf
10-16-87	6.	First amend complt for declaratory & injunctive relief, class action. pltfs.
10-29-87	7.	STIP & ORD that pltfs' mot to certify class cont to 11-23-87 @ 10am & defts are grantd ext of ti until 11-23-87 to respond to 1st amend complt.
	8.	ORD that pltfs' mot to certify class cont to 11-23-87 @ 10am & defts grantd until 11-23-87 to respond to 1st amend complt.
10-30-87	9.	Proof of svc of S&C, etc to Clrk of Board of Supervisors & Cois Byrd, 10-22-87. pltf.
11-6-87	10.	Ex parte applic for ext of ti to respond to req for class certification, declaration of Pamela Victorine in supp. defts. LODGED ORD
11-10-87	11.	Memo in opp to ex parte mot to cont class certification mot. pltf.

	12.	ORD that defts have ti ext until 30 days after crt ruled on defts' mot to dism to respond to pltfs' req for class certification. defts.
11-18-87	13.	Pltfs' ex parte mot re prod of daily repts of admission & access to prisoners in Riverside Cnty Jail set for hrg 11-30-87 @10am. MO N/R
11-20-87	14.	Notc of mtn to dism 1st A/C retnbl 12-21-87, 10AM; memo of P/A. Dfts Cnty of Riverside & Cois Byrd, Sheriff of Riverside Cnty.
11-16-87	15.	Response to pltf's ex parte applic. Dfts.
11-17-87	17.	Ex parte mtn fr ord to prod daily reprots. Pltf LDOGED prop Ord.
11-24-87	18.	Notc of change of atty. pltf.
11-30-87	19.	Hrg hld, crt grants in part & denies in part pltf's ex parte applic. MO LLeB
	20.	P's & A's in supp of response to pltf's ex parte applic for crt ord to interview ja inmates; declaration of Pamela Victorine, exhibit 101. County of Riverside & Cois Byrd
12-4-87	21.	pltf memo in opp to deft motn to dism
12-21-87	22.	deft motn to dism 1st A/C under submission MOLB
1-22-88	23.	Supplmntl exhibits re class certification. pltfs.
	24.	Supplmntl exhibit of pltfs. pltfs.
3-10-88	25.	Supplemental memo – hrgs. pltfs.
6-22-88	26.	Notc of stat conf on 7-11-88 11 am. pltf

7-11-88	27.	Stat conf/settlement conf. Deft's cnsel orally moves for Crt to rule on the 12(b)(6) motn presently under submission. NOT RULED ON. pltfs allowed 30 days to obtain name of incarcerated pltf. M.O. C/R-LL
7-25-88	28.	ORD that pltf's 2nd A/C is deemed fld. Defts may have 30 days to answer. RAG
	29.	Ex parte motn to amend memo & declars. pltfs
	30.	Ex parte motn to certify access to cnsel class & for access to cnsel order. pltfs
	31.	Crt GRANTS ex parte applic to amend memo, etc & 2nd A/C is fld. Crt conts hrg of motn to certify access to counsel, etc to 8-12-88 @9:30 am at which ti Crt will also hr argument on deft's 12(b) motn presently under submission. M.O. C/R-LL
8-11-88	32.	Stip & ORD to tk motn to dsms off calendar, to tk motn for atty access off-calendar and to cont hrg on pltfs' motn for class cert and a stat conf to 10-17-88 at 11 am. defts County of Riverside, Cois Byrd
7-29-88	33.	Notc of change in hrg date on motn to dsms to 8-9-88 at 1:30 pm. defts
8-5-88	34.	Supplemental memo. pltfs
8-9-88	35.	Stip & ORD correcting name of pltf Johnny E. James instead of Jones. pltfs
8-23-88	36.	ANSWER TO SECOND A/C; DEMAND FOR J/T; class actn. deft Cnty of Riverside & Cois Byrd
9-20-88	37.	Notc of cont of pltf's motn to certify class & stat conf to 11-14-88 11 am.

10-31-88	38.	Stat conf stmt. defts Cnty of Riverside and Cois Byrd, Sheriff Riverside Cnty
	39.	Oppos to certfctn of subclass of pregnant inmates & req for partial abstention. defts Cnty of Riverside and Cois Byrd, Sheriff Riverside Cnty
11-7-88	40.	Stat conf memo. pltfs
	41.	Reply memo. pltfs
11-14-88	42.	HRg hld. Crt GRANTS pltf's motn & ORDS class cert reinmates. Crt also calendars stat conf for 12-19-88 11 am. MO C/R-LL
12-9-88	43.	Stip & ORD to cont hrg on stat conf to 2-6-89 11 am. defts Cnty or [sic] Riverside Cois Byrd, Sheriff Riverside Cnty
1-19-89	44.	Stat conf memo. defts Cnty of Riverside & sheriff Cois Byrd
1-25-89	45.	Stat Conf stmt. pltfs
2-6-89	46.	HRG: Status Confer. Hrg hld. matter cont'd for fur status confer til 3/6/89 11AM. MO. (L.LeBlanc)
*11-15-88	41.	Hrg hld. Crt GRANTS Pltf's motn & ORD class cert re: inmates. Crt also calendars stat conf 12-19-88 11 am. MO C/R-LL
3-3-89	42.	Notc of motn/motn for prelim injunct, rtble 4-3-89 10 am. pltfs LODGED prop ORD (Fwd to CRD)
3-6-89	43.	Stat conf held. MO C/R-LH
3-6-89	44.	Assn of cnsel Peter J. Ferguson for defts.
3-10-89	45.	Notc of assn of cnsel of Dan Storner [sic] for pltfs

3-17-89	46.	Declar Richard Herman in oppos to ex parte applc to cont hrg. pltfs
3-16-89	47.	Declar Peter Ferguson in suppt of ex parte applic for extn of ti. defts
3-17-89	48.	Receipt for reptr's transcr for hrg 11-14-88 C/R-LL. (transcr inclu)
*3-3-89	49.	Stat conf memo-Riverside etc
3-22-89	50.	EX PARTE APPLIC & ORD for an extension of ti to resp to pltfs' motn for P/I set for 4-3-89 is cont'd to 4-24-89, 10AM. defts' brief shall be fld & srvd NLT 4-7-89 & pltf's reply brief, if any, shall be fld & srvd NLT 4-12-89.
3-24-89	51.	Stip re 1st appearance. pltfs
4-7-89	52.	Memo P & A in oppos to motn for prelim injunct. defts Cnty Riverside, Cois Byrd, Sheriff of Riverside Cnty
04-13-89	53.	rply memo.,, pltf
4-17-89	54.	Pltf's motn for prelim injunc tkn and submssn. MO C/R-LL
4-19-89	55.	PRelim injunct that all persons arrested w/o warrant & detained in Riv Cnty Main Jail shall w/i 36 hrg of ti of arrest to tkn before Judge, Mag, Crt Comsr for hrg of determination of probable cause for detention. Policy eff 60 days aft ent of this ord.
5-11-89	56.	Deft's Fld NOTC OF APPEAL to 9th Cir. C/A frm ord fld 4-19-89. $105.00 flng & doc fees pd.

(7)

No. 89-1817

FILED
NOV 15 1990
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1990

COUNTY OF RIVERSIDE and COIS BYRD,
SHERIFF OF RIVERSIDE COUNTY,

Petitioners,

v.

DONALD McLAUGHLIN, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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QUESTIONS PRESENTED

1. Does a plaintiff arrested without a warrant and allegedly held without receiving a constitutionally prompt probable cause determination possess article III standing for purposes of obtaining an injunction requiring a public entity to provide warrantless arrestees with constitutionally prompt probable cause hearings when (a) the time in which to provide plaintiff with a constitutionally prompt hearing has passed and (b) there is no allegation that the plaintiff will again be subjected to the allegedly unconstitutional practices of the public entity?

2. Where a state, pursuant to this Court's invitation in *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 859 (1975) incorporates probable cause determinations for warrantless arrestees into existing pre-trial procedures such as arraignment that afford the arrestee additional constitutional protections, must the additional time necessary to provide these more extensive proceedings be factored into any determination as to whether the probable cause hearing is sufficiently "prompt" under *Gerstein*?

LIST OF PARTIES

The parties to the proceeding below were the petitioners County of Riverside and Riverside County Sheriff Cois Byrd and respondents Donald Lee McLaughlin, John E. Jones, Diane Simon, Michael Scott Hyde, Bret Hale, David Keiser, Sharon Sweeney and Lavonne Hinds, on behalf of themselves and as representatives of a similarly situated class.

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II. THE PRELIMINARY INJUNCTION SHOULD HAVE BEEN DENIED BECAUSE THE COUNTY OF RIVERSIDE'S COMPLIANCE WITH CALIFORNIA PENAL CODE SECTIONS 825 AND 991 IN PROVIDING WARRANTLESS ARRESTEES WITH THE OPPORTUNITY TO RECEIVE PROBABLE CAUSE DETERMINATIONS AT THE TIME OF ARRAIGNMENT, WITHIN TWO DAYS OF ARREST, EXCLUDING WEEKENDS AND HOLIDAYS, CONSTITUTES A CONSTITUTIONALLY PROMPT HEARING UNDER THE FOURTH AMENDMENT, AS INTERPRETED BY THIS COURT IN GERSTEIN V. PUGH. 29

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet., App. pp. 1-10) is reported at 888 F.2d 1276. The memorandum order of the United States District Court for the Central District of California granting a preliminary injunction in the case (Pet., App. pp. 11-13) is not reported.

JURISDICTION

The judgment of the Ninth Circuit (Pet., App. pp. 1-10) was entered on November 8, 1989. The petition for rehearing with a suggestion for rehearing en banc was denied on April 10, 1990. (Pet., App. p. 15.) On April 30, 1990, the Ninth Circuit granted petitioners' emergency motion for stay of mandate for 30 days pending the filing of a petition for writ of certiorari. (Pet., App. p. 16.) The petition for certiorari was filed on May 17, 1990, and granted on October 1, 1990. The jurisdiction of this Court to review the judgment of the Ninth Circuit is invoked under 28 U.S.C. section 1254(1).

STATUTES INVOLVED

The following statutes are involved in the case and, due to their length, are set forth verbatim in the Appendix hereto.

California Penal Code sections 825, 859, 859b, and 991

United States Constitution, Article III, sections 1 and 2

United States Constitution, Fourth Amendment

STATEMENT OF THE CASE

A. Overview Of The Action.

This is a class action suit under 42 U.S.C. section 1983 seeking injunctive and declaratory relief with respect to the manner in which the County of Riverside provides warrantless arrestees with probable cause hearings following arrest. Specifically, plaintiffs sought an injunction requiring the County of Riverside and its Sheriff, Cois Byrd, to provide warrantless arrestees with probable cause hearings within 36 consecutive hours of arrest. The County opposed the motion for preliminary injunction, arguing that (1) the named plaintiffs lacked standing under article III of the United States Constitution to pursue an action for injunctive relief since, according to the allegations of the complaint, their rights had already been violated and they would in no way benefit from the relief sought; and (2) the County provided warrantless arrestees with a constitutionally "prompt" probable cause hearing within two days of arrest excluding weekends and holidays, at the time of arraignment as required by California Penal Code sections 991 and 825. The district court granted the preliminary injunction and the Ninth Circuit affirmed the order, finding that the named plaintiffs possessed article III standing to pursue the action for injunctive relief and that the two day time period provided by California Penal Code sections 991 and 825 for providing probable cause determinations at arraignment was not "constitutionally prompt" within the meaning of this Court's decision in *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 859 (1975).

B. The Initial Proceedings.

On August 24, 1987, plaintiff Donald Lee McLaughlin filed a Complaint for declaratory and injunctive relief on behalf of himself and "all others similarly situated" in the United States District Court for the Central District of California. CR 1.[1] Named as defendants were the County of Riverside and Cois Byrd, as Sheriff of the County of Riverside and individually. *Id.* The Complaint purported to state a claim under 42 U.S.C. section 1983 for violation of civil rights, predicated upon the County of Riverside's alleged failure to provide "prompt probable cause" determinations for arrestees. The Complaint requested "an order and judgment requiring that defendants and the County of Riverside provide "in-custody arrestees, arrested without warrants, prompt probable cause, bail and arraignment hearings." *Id.* [p. 5]. The Complaint asserted that Mr. McLaughlin could properly represent the interest of the class members in that he was currently incarcerated in the Riverside County Jail and had not received a probable cause determination.

On October 13, 1987, plaintiffs moved to certify the class. CR 5. On October 16, 1987, plaintiffs filed a First Amended Complaint. CR 6. On November 20, 1987, the County of Riverside and Sheriff Byrd moved to dismiss the First Amended Complaint on the grounds that the named plaintiff lacked standing to prosecute the lawsuit in that there were no allegations that the named plaintiff

---

[1] CR refers to the docket number assigned to the document in the district court. References to the Joint Appendix filed in this Court will be denominated "JA".

would again be subject to the allegedly unconstitutional conduct, i.e., detention without a probable cause hearing, at any time in the future, citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660 (1983). CR 14. In light of the pending motion to dismiss, the district court continued the hearing on the motion to certify the class. CR 12. On December 4, 1987, plaintiff filed his opposition to the motion to dismiss the First Amended Complaint. CR 21. The motion to dismiss was taken under submission on December 21, 1987. CR 22.

The district court did not rule on the motion to dismiss the First Amended Complaint. CR 27. Rather, on July 25, 1988, pursuant to plaintiffs' request, the court accepted for filing a Second Amended Complaint. 1 JA 2; CR 28. The Second Amended Complaint alleged that plaintiff Donald Lee McLaughlin was arrested without a warrant, taken to Riverside County Jail, and was not arraigned for five days. 1 JA 3. It added as plaintiffs, Johnny E. Jones, Diana Rae Simon, and Michael Scott Hyde, asserting that they had been arrested without warrants, taken to Riverside County Jail, and "did not receive and have not received prompt probable cause and bail hearings and are still in custody." 1 JA 3. The Second Amended Complaint also added as defendants Brett Hale, David Keiser, who were "pre-trial detainees in Riverside County Jail."[2] The new complaint further asserted

[2] The Second Amended Complaint also added plaintiffs Sharon Sweeney and Lavonne Hinds who were alleged to be "pregnant women prisoners," in an attempt to assert a new cause of action predicated upon alleged inadequate conditions for such prisoners. 1 JA 3. The district court subsequently

(Continued on following page)

that "[a]t all times plaintiffs who were arrested without warrants were held in Riverside County Jail without prompt probable cause hearings, bail hearings or arraignment," that defendants "are violating Constitutional standards for prompt post arrest, judicial determinations of probable cause, and for bail and for arraignment" in that "Plaintiffs, but not defendants, believe there should be *no delay* between the time of arrest and presentation to a magistrate that is not necessary." 1 JA 5-6. The prayer requested issuance of an injunction directing the defendants to "provide in-custody arrestees, arrested without warrants, prompt probable cause, bail and arraignment hearings. . . . " 1 JA 7.

In light of the filing of the Second Amended Complaint, the motion to dismiss the First Amended Complaint was taken off calendar. CR 32. On August 23, 1988, defendants filed an answer to the Second Amended Complaint. CR 36. On November 14, 1988, the court granted plaintiffs' motion to certify the class. CR 41, 42.[3]

C. The Motion For Preliminary Injunction.

On March 3, 1989, plaintiffs filed a motion for preliminary injunction. 1 JA 16; CR 42. Based upon data

(Continued from previous page)

refused to certify the class for purposes of these claims or the basic jail condition claims of the plaintiffs, thus limiting the action to the *Gerstein* claim. See CR 41, 42.

[3] As previously noted, the class was certified only with respect to those prisoners purportedly held without receiving a prompt probable cause determination. CR 41, 42. The court did not certify the action for purposes of pursuing either the jail conditions or treatment of pregnant prisoners issues. *Id.*

collected almost a year and one-half earlier, in 1987, plaintiffs asserted that persons arrested without warrants in the Central Riverside County Jail were not receiving a prompt probable cause determination upon completion of the administrative steps necessary to complete an arrest as required by *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 859 (1975). Specifically, plaintiffs asserted that warrantless arrestees arrested "on a Thursday or a Friday do not see a Judge (or are not released for excessive detention before their first arraignment) until, at least, the following Monday or Tuesday, a delay of 72 hours or, on three-day weekends, 96 hours or more. . . . " 1 JA 17. Plaintiffs requested the court to issue a preliminary injunction requiring inmates in the Central Riverside County Jail to receive a probable cause determination within 36 hours of arrest, to be conducted by an appropriate judicial officer. 1 JA 21. The 36-hour time frame was based upon a stipulated order entered in a separate case before the same judge involving another County. 1 JA 22.

On April 7, 1989, defendants filed their opposition to the motion for preliminary injunction. 1 JA 86. Defendants argued that the named plaintiffs lacked standing in the lawsuit because there was no evidence that any of the named plaintiffs would again be subject to the allegedly unconstitutional policy and practice of the County of Riverside which formed the basis of their complaint. Specifically, there was no evidence to indicate that these individuals would again be arrested and subjected to detention without a prompt probable cause hearing. Defendants further argued that, based upon data collected in March 1989, prisoners detained in the Central Riverside County Jail were receiving a prompt probable

cause determination consistent with *Gerstein v. Pugh*. Pursuant to the California Supreme Court's interpretation of *Gerstein*, as well as consistent with California Penal Code sections 825 and 991, inmates were advised prior to arraignment of their right to have a probable cause hearing at that time. 1 JA 105-116; 120-129. Arraignments, in turn, were conducted within two days of arrest, i.e., Monday through Friday, excluding Saturdays, Sundays and holidays. 1 JA 120-121; 125-126. Defendants also offered booking records (2 JA 170-275) demonstrating that the majority of arrestees were released within 24 hours of arrest and that individuals held beyond the maximum two day statutory period without receiving arraignment were the exception and not the rule. 2 JA 161-164; 276-277.

On April 13, 1989, plaintiffs filed their reply to the opposition to the motion for preliminary injunction. 2 JA 278. Plaintiffs reiterated their argument that under *Gerstein*, a probable cause determination must be made within hours of arrest, and specifically asserted that felony arrestees in Riverside County could not obtain probable cause hearings until 14 days after arrest. 2 JA 281.

On April 17, 1989, the motion for preliminary injunction came on for hearing before the district court. CR 54. The motion was taken under submission. *Id*. On April 19, 1989, the court issued a preliminary injunction directing inmates at the Central Riverside County Jail to be taken before a "judge, Magistrate, Court Commissioner, or other authorized judicial officer" for a probable cause determination within 36 hours of arrest. 2 JA 332-334. Defendants were given 60 days in which to comply with the order. 2 JA 334. The order further stated that the court

would retain jurisdiction to review procedures adopted by the County pursuant to the order, and to monitor implementation of the procedures in the Riverside County branch jails "as soon as practicable." 2 JA 333-334.

D. Appeal To The Ninth Circuit

On May 11, 1989, defendants filed a notice of appeal from the district court's order granting the preliminary injunction. CR 56. Defendants then moved for a stay pending appeal in the district court, which was denied. Defendants then requested the Ninth Circuit to grant a stay pending appeal, and on June 20, 1989, the Ninth Circuit granted the request for stay and expedited the appeal.[4]

On November 8, 1989, in a published opinion, the Court of Appeals affirmed the order granting a preliminary injunction, expressly finding that under *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983), the named plaintiffs had standing to prosecute the action for injunctive relief since, at the time the complaint was filed, they were still in custody and thus still suffering injury as a result of the defendants' alleged unconstitutional action. The Court additionally found that providing probable cause determinations within the

[4] On appeal this action was consolidated with *McGregor v. County of San Bernardino*, Ninth Circuit Case No. 89-55542, a case arising from a virtually identical injunction issued as to the County of San Bernardino.

arraignment time frame of two days provided by California Penal Code sections 825 and 991 was not in accord with *Gerstein*'s requirement that a determination be made promptly after arrest, i.e., upon completion of the administrative steps incident to arrest such as booking and completion of paper work.[5] This Court then granted certiorari.

SUMMARY OF ARGUMENT

1. The motion for preliminary injunction should have been denied because the named plaintiffs lacked article III standing to prosecute the instant action. In *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660, this Court reaffirmed the principle that in order to establish standing to assert a claim for injunctive relief under article III of the Constitution, a plaintiff must establish that he or she will again be subject to the very conduct that the injunction seeks to prevent and will thus benefit from the relief sought. The Court expressly rejected the notion that the mere fact that the plaintiff suffered an injury as a result of the alleged unconstitutional actions of a defendant provided a basis for seeking injunctive relief to prevent future deprivations of rights. In the

[5] The Ninth Circuit reversed the district court's order granting a preliminary injunction as to the County of San Bernardino insofar as it required an arrestee to be present at the time the probable cause determination takes place. The Court found that the presence of the arrestee was not required at the probable cause hearing. That issue has not been presented to this Court by the parties.

instant case, the Second Amended Complaint specifically alleged that the named plaintiffs *did not* receive *prompt* probable cause determinations and requested the court to issue an order requiring the County of Riverside to provide prompt probable cause hearings. Yet, it is manifest that the named plaintiffs had no "personal stake" in the action for purposes of the equitable relief sought. Once they had been denied a *prompt* probable cause hearing, their rights had already been violated and to the extent they sought injunctive relief to prevent *future* violations, they would have to allege that they would again be subject to warrantless arrest without receiving a prompt probable cause determination. While the Ninth Circuit determined that it was simply enough that the named plaintiffs were all in custody and hence suffering injury at the time the complaint was filed even if injunctive relief could not remedy that injury, as noted above, in *City of Los Angeles v. Lyons*, this Court rejected precisely that theory. Here, as in *Lyons*, the constitutional violation asserted as the basis for the plaintiffs' equitable complaint was, as to the named plaintiffs, concluded at the time the complaint was filed, regardless of whether any injury lingered on. Any relief sought was solely prospective in nature. If the named plaintiffs had not yet received a prompt probable cause determination, the County of Riverside could not give them one because, under plaintiffs' theory of the case, the time in which to do so had *already* expired. Absent the allegation that they would again be subject to a warrantless arrest without probable cause and be held an impermissibly lengthy time without receiving a probable cause determination, the named plaintiffs clearly lacked standing to prosecute an action

for injunctive relief under article III. Moreover, the fact that this action has been brought as a class action does nothing to confer article III standing on the plaintiffs since, as this Court has repeatedly held, if the named plaintiffs do not possess article III standing to prosecute the action, they may not seek relief on behalf of themselves or any other member of the class. *O'Shea v. Littleton*, 414 U.S. 488, 494, 94 S.Ct. 669, 675, 38 L.Ed.2d 674 (1974); *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 40, n. 20, 96 S.Ct. 1917, 1925, n. 20, 48 L.Ed.2d 450 (1976). Nor is the "capable of repetition, yet evading review" doctrine applicable to the instant case. That doctrine applies only where the plaintiff possessed standing in the first place and the claim, by its nature, will be moot before the matter is resolved on appeal. As this Court noted in *Lyons*, it has no application where, as here, the plaintiff lacked standing to begin with and any claim can itself be reviewed in the context of a damage action. Plainly, the named plaintiffs lacked article III standing to prosecute the instant action for injunctive relief and the motion for preliminary injunction should have been denied.

2. The motion for preliminary injunction should have been denied, because providing warrantless arrestees with probable cause determinations at the time of arraignment within two days of arrest, excluding weekends and holidays, meets the requirements of the Fourth Amendment. In *Gerstein v. Pugh*, 420 U.S. 103, this Court found that individuals arrested without a warrant were entitled to a prompt probable cause determination as a prerequisite to extended pre-trial detention. However, the Court declined to mandate a specific timetable

for providing probable cause determinations to arrestees, expressly inviting the states to exercise flexibility in incorporating the probable cause determinations into existing pre-trial procedures, such as arraignment. In *Gerstein* and later in *Schall v. Martin*, 467 U.S. 253, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984), the Court suggested that probable cause determinations held during pre-trial proceedings taking place anywhere from two days to six full days after arrest were permissible under the Constitution. Consistent with *Gerstein*, in *In re Walters*, 15 Cal.3d 738, 126 Cal.Rptr. 239, 543 P.2d 607 (1975), the California Supreme Court found that probable cause determinations would be required at the time of arraignment, i.e., within two days of arrest – a requirement codified by the California Legislature in Penal Code section 991. The County of Riverside provides the opportunity for probable cause determinations to warrantless arrestees at the time of arraignment, within two days of arrest, in compliance with California Penal Code sections 991 and 825. This is precisely the sort of incorporation of probable cause determinations into existing pre-trial procedures that this Court invited in *Gerstein*. To require probable cause determinations to be provided to warrantless arrestees based solely upon the time necessary to complete paper work attending the arrest, effectively prevents a public entity from merging a probable cause hearing into any pre-existing judicial procedure. As this Court has recognized, providing additional constitutional protections in the context of such hearings necessarily requires additional time. In California, and specifically in the County of Riverside, these hearings are delayed no longer than necessary to allow hearing before a full judicial officer at the

time of arraignment, with the additional protections these more elaborate proceedings involve. While an intervening weekend or holiday may delay arraignment, as this Court's decisions in *Gerstein* and *Schall* make plain, the Fourth Amendment permits a state to delay a probable cause hearing for a reasonable period of time in order to provide an arrestee with greater constitutional protections than available in an ex parte proceeding. Plainly, a state or other public entity has a legitimate interest in avoiding needless multiplicity of pre-trial criminal proceedings which unnecessarily consume judicial time and resources that may slow the process to the detriment of all who pass through it without providing any concomitant benefit to any category of arrestee. Nor is there anything illegitimate about a public entity's desire to provide warrantless arrestees with greater procedural and substantive protections at a hearing that offers benefits beyond a simple determination of probable cause. Absent compelling evidence that the pre-trial detention in question is predominantly punitive in nature, a federal court should not substitute its judgment for that of local officials as to the appropriate time and manner in which probable cause determinations are to be made. *Bell v. Wolfish*, 441 U.S. 520, 539, 99 S.Ct. 1861, 1874, 60 L.Ed.2d 447 (1979). Indeed, these are precisely the sort of policy decisions that under our system of federalism are most properly delegated to local officials and federal courts must exercise particular caution when attempting to intervene in the day-to-day operation of local criminal justice systems. *Rizzo v. Goode*, 423 U.S. 362, 370-379, 96 S.Ct. 598, 603-608, 46 L.Ed.2d 561 (1976); *O'Shea v. Littleton*, 414 U.S. 448, 502, 94 S.Ct. at 679. Since the County

of Riverside was fully in compliance with the dictates of the Fourth Amendment as interpreted by this Court in *Gerstein*, the motion for preliminary injunction should have been denied.

ARGUMENT

I.

THE NAMED PLAINTIFFS LACK ARTICLE III STANDING TO SEEK INJUNCTIVE RELIEF IN FEDERAL COURT BECAUSE THE ALLEGATIONS OF THE COMPLAINT MAKE IT CLEAR THAT ISSUANCE OF THE INJUNCTION SOUGHT COULD AT NO POINT HAVE REMEDIED THE ALLEGED PAST CONSTITUTIONAL VIOLATIONS THAT FORM THE BASIS OF THE COMPLAINT.

As this Court has observed, "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 37, 96 S.Ct. 1917, 1924, 48 L.Ed.2d 450. The "concept of standing is part of this limitation." *Id.* The essential inquiry for purposes of determining whether there is standing to prosecute an action under article III is "whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant *his* invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Warth v. Seldin*, 422 U.S. 490, 498-499, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343, 354 (1975); emphasis in original. To determine whether a plaintiff has a "personal stake" in the lawsuit so as to

confer standing under article III, the "relevant inquiry is whether, assuming justiciability of the claim, the plaintiff has shown an injury to himself *that is likely to be redressed by a favorable decision*. Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Art. III limitation." *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. at 38, 96 S.Ct. at 1924; emphasis added. Indeed, it is only through insistence that the plaintiff prosecuting an action possess a "personal stake" in the outcome that the "concrete adverseness which sharpens the presentations of issues upon which the court so largely depends for illumination of difficult . . . questions" can be assured. *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663, 678 (1962).

Thus, standing under article III is a threshold determination going squarely to the ability of a federal court to adjudicate a dispute. As this Court has recognized, this is true regardless of whether the action is brought by an individual or on behalf of a class. As the Court observed in *Simon*: "That a suit may be a class action . . . adds nothing to the question of standing, for even named plaintiffs who represent a class 'must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.'" *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. at 40, fn. 20, 96 S.Ct. at 1925, fn. 20, quoting *Warth v. Seldin*, 422 U.S. 490, 502, 95 S.Ct. 2197, 2207, 45 L.Ed.2d 343. See also *Sosna v. Iowa*, 419 U.S. 393, 403, 95 S.Ct. 553, 559 (1974) ["A named plaintiff in a class action must show that the threat of injury in a case such as this is 'real

and immediate,' not 'conjectural' or 'hypothetical.' A litigant must be a member of the class which he or she seeks to represent at the time the class action is certified by the district court"].

This case involves a claim for injunctive relief by named plaintiffs in a class action who, at the time the complaint was filed and the class certified, clearly lacked any "personal stake" in obtaining the injunctive relief sought. Specifically, the Second Amended Complaint alleged that the named plaintiffs were "arrested without warrants, were taken to the Riverside County Jail, did not receive and have not received prompt probable cause and bail hearings and are still in custody." 1 JA 3. The prayer of the Second Amended Complaint then requests an "order and judgment requiring that the defendant and the County of Riverside provide in-custody arrestees, arrested without warrants, prompt probable cause, bail and arraignment hearings. . . . " 1 JA 7. In sum, the Second Amended Complaint alleges the named plaintiffs *did not* receive prompt probable cause determinations and asks the Court to issue an order requiring the County of Riverside to provide prompt probable cause hearings.

The problem with plaintiffs' position is, however, that once they did not receive a *prompt* probable cause hearing, their rights had already been violated, i.e., no prompt determination had taken place. Because plaintiffs had already allegedly been held without a prompt probable cause determination, the equitable relief sought would in no way be able to redress *their* injuries – the alleged transgression had already occurred. To the extent they seek injunctive relief to prevent *future* violations, they would have to allege that they would again be

subject to warrantless arrest and prolonged detention without receiving a prompt probable cause determination. In its opinion affirming the district court's order granting a preliminary injunction, however, the Ninth Circuit determined that it was simply enough that the named plaintiffs were all suffering an injury, i.e., in custody, at the time the complaint was filed, even if the injunctive relief could not cure that injury. See Pet. for Cert., App. 6 ["[N]amed plaintiffs in this suit against Riverside County were jail inmates arrested without warrants who had not yet received prompt-probable cause determinations, and were still in custody at the time they filed their complaint. Rather than complaining of a past constitutional violation, plaintiffs in *McLaughlin* were actually suffering the harm for which they sought injunctive relief"]. Yet, the Ninth Circuit's conclusion in this regard is flatly inconsistent with the decisions of this Court which make it clear that, with respect to determining standing to invoke injunctive relief, it is not sufficient that the plaintiff suffered an injury as a result of the alleged improper conduct; rather, the plaintiff must be in a position where injunctive relief would remedy the injury which spawned the lawsuit.

This Court's decision in *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983) is directly on point. In *Lyons*, the plaintiff brought an action for damages and injunctive relief challenging the policy of the Los Angeles Police Department in their use of chokeholds on arrestees, except in situations where deadly force was threatened. In support of his claims, Lyons alleged that he had been stopped by Los Angeles police officers for a Vehicle Code violation, that he had

offered no resistance, and that he was subjected to a chokehold. While the Ninth Circuit had initially determined that Lyons alleged facts sufficient to establish article III standing to seek injunctive relief by asserting that he had been subjected to the challenged chokehold procedure, this Court granted certiorari and reversed. The Court found that regardless of whether plaintiff's constitutional rights had *been* violated by the defendants' alleged illegal chokehold policy, he could not seek injunctive relief absent the allegation that he would again be detained by police officers and be subjected to the alleged improper use of force:

> "Lyons' standing to seek the injunction requested depended on whether he was likely to suffer future injury from the use of the chokeholds by police officers. Count V of the complaint alleged the traffic stop and choking incident five months before. That Lyons may have been illegally choked by the police on October 6, 1976, while presumably affording Lyons standing to claim damages against the individual officers and perhaps against the city, does nothing to establish a real and immediate threat that he would again be stopped for a traffic violation, or for any other offense, by an officer or officers who would illegally choke him into unconsciousness without any provocation or resistance on his part." 461 U.S. at 105; 103 S.Ct. at 1667.

Thus, the Court was careful to recognize the distinction between standing for purposes of asserting a damage claim and the standing necessary to assert a claim for injunctive relief; in the latter instance, the plaintiff lacks any personal stake in the litigation absent proof that he or

she will again be exposed to the alleged unconstitutional action:

> "The Court of Appeal . . . asserted that Lyons had a 'live and active claim' against the city 'if only for a period of a few seconds' while the stranglehold was being applied to him and that for two reasons the claim had not become moot so as to disentitle Lyons to injunctive relief. . . . We agree that Lyons *had* a live controversy with the City. Indeed, he still has a claim for damages against the City that appears to meet all Art. III requirements. Nevertheless, the issue here is not whether that claim has become moot but whether Lyons meets the preconditions for asserting an injunctive claim in a federal forum. The equitable doctrine that the cessation of the challenged conduct does not bar any injunction is of little help in this respect for, Lyons' lack of standing does not rest on the termination of the police practice but on the speculative nature of his claim that he will again experience injury as a result of that practice even if continued." 461 U.S. at 109, 103 S.Ct. at 1669.

As the Court recognized in *Lyons*, it has always required a plaintiff seeking equitable relief with respect to an alleged improper law enforcement practice or criminal statute, to demonstrate that he or she would again be subjected to the alleged unconstitutional practice and hence be able to benefit from the relief sought. Thus, in *Golden v. Zwickler*, 394 U.S. 103, 89 S.Ct. 956, 22 L.Ed.2d 113 (1969), this Court reversed a declaratory judgment for the plaintiff invalidating a New York statute that prohibited distribution of anonymous handbills pertaining to election campaigns, based upon the absence of any evidence that the plaintiff would again be subject to prosecution under the statute. Specifically, the plaintiff had

been convicted under the statute with respect to distributing handbills in opposition to the candidacy of a particular Congressman. Since that candidate was subsequently appointed to the bench and thus unlikely to run again, the Court found that plaintiff had failed to establish that he would again necessarily distribute handbills in violation of the statute. See 394 U.S. at 109 ["Since the New York statute's prohibition of anonymous handbills applies only to handbills directly pertaining to election campaigns, and the prospect was neither real nor immediate of a campaign involving the Congressman, it was wholly conjectural that another occasion might arise when Zwickler might be prosecuted for distributing the handbills referred to in the complaint. His assertion in his brief that the former Congressman can be 'a candidate for Congress again' is hardly a substitute for evidence that this is a prospect of immediacy and reality"].

Similarly, in *O'Shea v. Littleton*, 414 U.S. 488, 94 S.Ct. 669, 38 L.Ed.2d 674, the Court found that the named plaintiffs lacked standing to prosecute a claim for injunctive relief seeking to correct alleged discriminatory enforcement of criminal laws against the class members. The plaintiffs asserted that a county magistrate and judge subjected class members to particularly severe sentences and inflated bail requirements and committed other acts which resulted in the discriminatory enforcement of laws. The Court noted, however, that the class members did not allege that they were presently subjected to such conduct or that they would again be the victim of these practices. Rather, the prospect of future exposure to the defendants' alleged improper conduct rested "on the likelihood that [plaintiffs] will again be arrested for and charged with

violations of the criminal law and will again be subjected to bond proceedings, trial, or sentencing before petitioners." *Id.* at 496, 94 S.Ct. at 676. Thus, this Court observed that it would be assumed that in the future the plaintiffs "will conduct their activities within the law and so avoid prosecution and conviction as well as exposure to the challenged course of conduct said to be followed by petitioners." *Id.* at 497, 94 S.Ct. at 677.

In *Ellis v. Dyson*, 421 U.S. 426, 95 S.Ct. 1691, 44 L.Ed.2d 214 (1975), the Court declined to reach the merits of plaintiffs' contention that a Texas statute rendering loitering a crime was unconstitutionally vague. It noted that the criminal proceedings against the plaintiffs had been concluded, and, in the absence of any information concerning whether the plaintiffs would again be subject to prosecution under the statute, the Court could not determine whether the plaintiffs possessed standing under article III. See 421 U.S. at 434, 95 S.Ct. 1696 ["[O]n remand the District Court will find it desirable to examine the current enforcement scheme in order to determine whether, indeed, there is now a credible threat that petitioners, assuming they are physically present in Dallas, might be arrested and charged with loitering. A genuine threat must be demonstrated if a case or controversy within the meaning of article III of the Constitution and of the Declaratory Judgment Act may be said to exist"].

Here, too, the named plaintiffs failed to allege, much less establish, that they would again be subjected to the alleged improper conduct of the County in processing criminal defendants so that injunctive relief would benefit them. As in *Lyons*, the constitutional violation asserted as the basis for the plaintiffs' equitable complaint was, as

to the named plaintiffs, concluded at the time the complaint was filed and any relief sought was solely *prospective* in nature. If the named plaintiffs had not yet received a prompt probable cause determination, the County of Riverside could not give them one because, according to plaintiffs' allegations, the time in which to do so had *already* expired. Despite the Ninth Circuit's conclusion, even if the plaintiffs were still in custody at the time the complaint was filed, the mere fact that the injury stemming from the alleged constitutional violation continues cannot provide a basis for injunctive relief if the relief sought does not cure the injury. If that were so, then the plaintiff in *Lyons* would have had standing to assert a claim for equitable relief simply by alleging that he suffered personal injuries by reason of application of the chokehold. Yet, as the Court held in *Lyons*, the existence of a damage claim which may allow redress for injuries resulting from alleged constitutional action is entirely different from a complaint for equitable relief seeking termination of the alleged practice. Standing requires not simply that a plaintiff suffer injury, but that the plaintiff's injury be capable of redress through the relief sought. As this Court noted in *Lewis v. Continental Bank Corp.*, ___ U.S. ___, 110 S.Ct. 1249, 1253, 108 L.Ed.2d 400 (1990): "To invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the defendant and *likely to be redressed by a favorable judicial decision* [citation]", emphasis added; see also *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. at 38, 96 S.Ct. at 1924 ["(T)he relevant inquiry is whether . . . the plaintiff has shown an injury to himself *that is*

likely to be redressed by a favorable decision"]; emphasis added.

Indeed, requiring a plaintiff seeking injunctive relief to allege facts showing that he or she will benefit from the relief sought is the only way to "assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult . . . questions." *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663, 678. For example, in the instant case, what interest do the named plaintiffs have in vigorously litigating the question of whether individuals who may be arrested *in the future* will receive prompt probable cause determinations which, according to the allegations of their complaint, they did not (and indeed now cannot) receive?

Quite plainly, the only instance in which the named plaintiffs in this action could conceivably benefit from an injunction would be where there were allegations suggesting that the named plaintiffs themselves would again be subject to warrantless arrest and detention without receiving constitutionally prompt probable cause determinations. Yet, the complaint contains no allegation that the named plaintiffs would ever engage in conduct likely to subject them to warrantless arrest and detention. For example, there is no allegation that the named plaintiffs are habitually subject to warrantless arrest without probable cause so as to create a "credible threat" that they would again be subjected to the unconstitutional processes which form the basis of the instant lawsuit. See *Kolender v. Lawson*, 461 U.S. 352, 355, fn. 3, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983) [held, plaintiff possessed standing to assert claim for declaratory judgment and mandatory

injunction barring enforcement of unconstitutionally vague statute allowing police to detain a person for failure to provide adequate identification: "We note that Lawson has been stopped on approximately 15 occasions pursuant to section 647(e) and that these 15 stops occurred in a period of less than two years. Thus, there is a 'credible threat' that Lawson might be detained again under section 647(e)"]; *Ellis v. Dyson*, 421 U.S. at 434, 95 S.Ct. at 1696.[6]

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[6] Moreover, we note that even if plaintiffs could credibly allege that they would again be subject to warrantless arrest without probable cause and detention in the Riverside County jail system, these allegations alone would be insufficient to establish that they would be subject to the alleged unconstitutional conduct of which they complained – being detained in jail for an unconstitutionally lengthy time period prior to receiving a probable cause determination. As the undisputed evidence submitted by the County in the district court indicated and as plaintiffs essentially conceded, a majority of warrantless arrestees are released in 24 hours or less. 2 JA 276-277. Thus, plaintiffs could not credibly allege that they would not necessarily be among the majority of individuals who in fact are not retained in custody following their initial arrest. See *Lyons* at 461 U.S. 108, 103 S.Ct. at 1668 ["But even assuming that Lyons would again be stopped for a traffic or other violation in the reasonably near future, it is untenable to assert, and the complaint made no such allegation, that strangleholds are applied by the Los Angeles police to every citizen who is stopped or arrested regardless of the conduct of the person stopped. We cannot agree that the 'odds' [citation], that Lyons would not only again be stopped for a traffic violation but would also be subjected to a chokehold without any provocation whatsoever are sufficient to make out a federal case for equitable relief"].

The allegations of the Second Amended Complaint make it clear that the named plaintiffs have no stake whatsoever in obtaining injunctive relief in this case. The injunction sought would not result in *their* receiving a prompt probable cause determination, since by their own allegation, the time in which to provide them with such a determination had already passed. Nor is an injunction sought which would result in their immediate release based upon their failure to have received such a determination.[7] In short, the complaint lacks any allegation even remotely suggesting that any of the named plaintiffs would benefit from injunctive relief. Despite the conclusions of the Ninth Circuit and the arguments urged by plaintiffs, the fact that they themselves cannot benefit

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[7] Indeed, as this Court noted in *Gerstein*, a request for injunctive relief seeking a plaintiff's release from custody based upon the failure to have obtained a probable cause hearing would, in and of itself, run afoul of this Court's decision in *Preiser v. Rodriguez*, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973). See 420 U.S. at 107, fn. 6, 95 S.Ct. at 859 ["Because release was neither asked nor ordered, the lawsuit did not come within the class of cases for which habeas corpus is the exclusive remedy"]. See also *O'Shea v. Littleton*, 414 U.S. at 496, 94 S.Ct. at 676 ["(n)either the complaint nor respondents' counsel suggested that any of the named plaintiffs at the time the complaint was filed were themselves serving an allegedly illegal sentence or were on trial or awaiting trial before petitioners. Indeed, if any of the respondents were then serving an assertedly unlawful sentence, the complaint would be inappropriately seeking relief from or modification of current, existing custody. See *Preiser v. Rodriguez*. [Citations.] Furthermore, if any of them were on trial or awaiting trial in state proceedings, the complaint would be seeking injunctive relief that a federal court should not provide. *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971). . . . "].

from the relief which forms the very focus of this lawsuit underscores their lack of standing under article III.

Nor is plaintiffs' claim saved by invocation of the "capable of repetition yet evading review" doctrine. As a threshold matter, the "capable of repetition yet evading review" doctrine allows a plaintiff who has standing *at the time the case is filed* to continue to pursue the action in spite of the fact that the passage of time has eliminated the facts giving rise to the actual controversy between the parties. The classic example of this is *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), where the plaintiff's challenge to state laws which restricted her right to abortion was no longer a live controversy by the time the case was before this Court, since she was no longer pregnant. Nonetheless, since she had standing at the outset and the problem was capable of repetition and might otherwise evade review, this Court reached the substantive issues underlying the case. Similarly, in a class action context, if the case of the named plaintiff becomes moot, the Court may address the underlying issues so long as some member of the class has a live claim. Indeed, this is precisely the analysis employed by the Court in finding standing in *Gerstein* for purposes of allowing the plaintiffs to seek injunctive relief requiring the State of Florida to enact a mechanism to provide probable cause hearings to warrantless arrestees. While the Court found that the named plaintiff's case was now moot, since he had been convicted, it nonetheless found that the existence of a certified class that by its nature would be subjected to the unconstitutional policy forming the basis of the lawsuit, prevented the action as a whole from becoming moot. *Gerstein*, 420 U.S. at 110, n.

11, 95 S.Ct. 861; see also *Schall v. Martin*, 467 U.S. 253, 256, n. 3, 104 S.Ct. 2403, 2405, n. 3 ["Although the pre-trial detention of the class representatives has long since ended [citation], this case is not moot for the same reason that the class action in *Gerstein* . . . was not mooted by the termination of the claims of the named plaintiffs"]. However, as previously noted, this Court has repeatedly held that a class does not possess standing to prosecute a lawsuit unless a named plaintiff has standing at the time the complaint is filed and the class is certified. See *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. at 40, fn. 20, *Sosna v. Iowa*, 419 U.S. at 403, 95 S.Ct. at 559. Thus, the doctrine of "capable of repetition yet evading review" does not even come into play with respect to a class action unless the named plaintiffs have already established their standing – the doctrine itself cannot establish their standing.[8]

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[8] In the district court, in the Court of Appeals, and in their opposition to the petition for certiorari in the instant case, plaintiffs have argued that this Court's discussion of mootness in *Gerstein* cited above, is dispositive of the issue of the named plaintiffs' standing to bring the instant action. Yet, plaintiffs' contention does not bear scrutiny. As previously noted, in *Gerstein*, the Court simply assumed that the named plaintiffs had standing at the time the class was certified and focused solely on the question of whether *mootness* of the named plaintiff's claim would moot the action as to the entire class. In addition, *Gerstein* was decided eight years before this Court's decision in *Lyons* clarifying the requirements of article III standing for purposes of seeking injunctive relief. As discussed herein, application of the principles enunciated in *Lyons* to the instant case, makes it clear that the named plaintiffs lack standing to prosecute the instant case for injunctive relief. Hence, this Court's discussion in *Gerstein* (and subsequently *Schall*) with respect to mootness is simply inapplicable to this case.

Moreover, as this Court noted in *Lyons*, the doctrine of "capable of repetition yet evading review" is inapplicable where, as here, it is possible that a plaintiff may litigate the constitutional question involved in the context of a damage claim. *Lyons*, 461 U.S. at 109, 103 S.Ct. at 1669.[9]

As this Court emphasized in *Lewis v. Continental Bank Corp.*, ___ U.S. ___, 110 S.Ct. 1249, 1253: "Article III denies federal courts the power 'to decide questions that cannot affect the rights of litigants in the case before them. . . .' " Since the instant action will in no way "affect the rights" of the named plaintiffs, the federal courts plainly lack jurisdiction to entertain their claim for injunctive relief. Hence, on this ground alone, the district court had no alternative other than to deny the motion for preliminary injunction.

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[9] Indeed, the Seventh Circuit in *Robinson v. City of Chicago*, 868 F.2d 959, 968 (7th Cir. 1989) similarly rejected the "capable of repetition" doctrine in finding that the named plaintiffs lacked article III standing to prosecute an action for injunctive relief seeking accelerated probable cause hearings for pre-trial detention: "Robinson could have achieved the same results as reached here by suing the City for damages; the court's holding that the General Order was unconstitutional would have served as *res judicata* in any subsequent action. Robinson most likely chose not to pursue class-wide damages to avoid the attendant notice requirements, but '[t]here is no need to throw away a venerable constitutional rule just to retain a replaceable champion.' "

II. THE PRELIMINARY INJUNCTION SHOULD HAVE BEEN DENIED BECAUSE THE COUNTY OF RIVERSIDE'S COMPLIANCE WITH CALIFORNIA PENAL CODE SECTIONS 825 AND 991 IN PROVIDING WARRANTLESS ARRESTEES WITH THE OPPORTUNITY TO RECEIVE PROBABLE CAUSE DETERMINATIONS AT THE TIME OF ARRAIGNMENT, WITHIN TWO DAYS OF ARREST, EXCLUDING WEEKENDS AND HOLIDAYS, CONSTITUTES A CONSTITUTIONALLY PROMPT HEARING UNDER THE FOURTH AMENDMENT, AS INTERPRETED BY THIS COURT IN GERSTEIN V. PUGH.

Plaintiffs sought an injunction against the County of Riverside and its Sheriff, Cois Byrd, requiring defendants to provide persons arrested without a warrant with a probable cause hearing before a magistrate, court commissioner or other judicial officer within 36 consecutive hours of arrest. Plaintiffs argued, and the district court agreed, that such a probable cause hearing was mandated by this Court's decision in *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854 (1975), as well as the Ninth Circuit's decision in *Bernard v. City of Palo Alto*, 699 F.2d 1023 (9th Cir. 1983).[10] In support of their application for injunctive relief, plaintiffs submitted arrest records that were almost two years old – from 1987 – purporting to show the number of arrested persons who were kept in custody without receiving a prompt probable cause determination. Thus, plaintiffs argued to the district court that in

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[10] In *Bernard*, the Ninth Circuit held that the City of Palo Alto was required to provide warrantless arrestees with a probable cause determination within 24 consecutive hours of arrest. See 699 F.2d at 1025.

order to avoid continued "deprivation of constitutional rights," it was "necessary" that the court issue an injunction.

In response, the County demonstrated by uncontradicted evidence that probable cause determinations were provided to warrantless arrestees at the time of arraignment within two days of arrest, excluding weekends and holidays, pursuant to California Penal Code sections 825 and 991 and the California Supreme Court's decision in *In re Walters*, 15 Cal.3d 738, 126 Cal.Rptr. 239, 543 P.2d 607, interpreting this Court's decision in *Gerstein*. In its November 8, 1989, opinion, the Ninth Circuit expressly held that providing probable cause determinations at arraignment within the time frames provided by California Penal Code sections 825 and 991 "is not in accord with *Gerstein*'s requirement of a determination 'promptly after arrest.'" Pet. for Cert., App. p. 7. In so holding, the Court stated that *Gerstein* required a probable cause determination to be made "as soon as the administrative steps incident to the arrest were completed, and that such steps should require only a 'brief period'" – in this case, 36 consecutive hours after arrest. Thus, in determining the constitutional "promptness" of the probable cause determination, the Ninth Circuit looked *solely* to completion of arrest reports and the like, and ignored the time necessary to provide a warrantless arrestee with an adversarial hearing at arraignment in compliance with California state law.

The Ninth Circuit's determination that the "promptness" of a probable cause hearing turns solely upon completion of the administrative steps incident to arrest, without allowing for delays necessitated by providing an

arrestee with greater constitutional protections and integrating the probable cause hearing into existing pre-trial proceedings, is inconsistent with this Court's decision in *Gerstein* and interprets the Fourth Amendment so broadly as to mandate an entirely separate tier of pre-trial criminal proceedings. The result is an unnecessary restraint on the states in enacting and administrating their criminal justice systems within constitutional boundaries, in direct contravention of the most basic principles of federalism, and the improper injection of the lower federal courts into local criminal justice systems – requiring the courts to evaluate the promptness of probable cause hearings on a county-by-county or even city-by-city basis.

A. The Fourth Amendment Does Not Prohibit Delays In Providing Probable Cause Hearings To Warrantless Arrestees Resulting From The Incorporation Of Such Hearings Into Existing Proceedings That Afford The Arrestees Substantially Greater Constitutional Protections.

Gerstein involved a constitutional challenge to Florida procedures under which criminal defendants charged by a prosecutor's information could be detained for extended periods of time without receiving a judicial determination of the question of whether there was probable cause for arrest and detention. At the time the plaintiffs were arrested Florida law appeared to authorize a preliminary hearing to determine the question of probable cause, but Florida courts had held that if the prosecutor proceeded by information, an arrestee could not obtain a preliminary hearing. See 420 U.S. at 105-106, 95 S.Ct. at 859. Thus, as this Court observed: "Under the

Florida procedures challenged here, a person arrested without a warrant and charged by information may be jailed or subjected to other restraints pending trial without *any* opportunity for a probable cause determination." 420 U.S. at 116, 95 S.Ct. at 864; emphasis added. Moreover, even as to those individuals who were not charged by information and hence could receive a probable cause determination at a preliminary hearing, Florida law provided that the preliminary hearing and/or arraignment in which a probable cause determination would be made could be delayed as much as 30 days after arrest. See 420 U.S. at 106, 95 S.Ct. at 859. Nor could a prisoner test probable cause by way of state court habeas corpus. *Id.* Thus, under the Florida procedures at issue in *Gerstein*, a defendant arrested without a warrant would likely not receive a probable cause determination, if at all, until 30 days after arrest.

In affirming the Court of Appeals' determination that the Florida procedures violated the Fourth Amendment, this Court observed that while "a policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest," once a suspect is in custody "the State's reasons for taking summary action subside," and the "suspect's need for a neutral determination of probable cause increases significantly." 420 U.S. at 113-114, 95 S.Ct. at 863. Thus, this Court held that "the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest." 420 U.S. at 114, 95 S.Ct. at 863.

While upholding the Court of Appeals' determination that the Florida procedures violated the Fourth Amendment, this Court nonetheless reversed the lower appellate court's determination that Florida was required to provide probable cause determinations in the context of a preliminary hearing that offered a full-blown adversarial proceeding with accompanying constitutional protections. Noting the restricted focus of a probable cause inquiry, the Court found that "adversary safeguards are not essential for the probable cause determination," since the issue "can be determined reliably without an adversary hearing. The standard is the same as that for arrest. That standard – probable cause to believe the suspect has committed a crime – traditionally has been decided by a magistrate in a nonadversary proceeding on hearsay and written testimony and the Court has approved these informal modes of proof." 420 U.S. at 120. The Court observed, however, that "[t]his is not to say that confrontation and cross-examination might not enhance the reliability of probable cause determinations in some cases. 420 U.S. at 121-122, 95 S.Ct. at 867. It was concerned, however, that *requiring* states to provide full-blown hearings "could exacerbate the problem of pretrial delay." 420 U.S. at 122, fn. 23, 95 S.Ct. at 867; emphasis added. This was because as "the procedures become more complex the likelihood that it [a probable cause hearing] can be held promptly after arrest diminishes." 420 U.S. at 120.

However, while the Court held that the Constitution did not *require* a full-blown adversary proceeding for probable cause determinations, it nonetheless found that

the states were free to provide such protections within a reasonable time frame. As the Court held:

> "[W]e recognize that state systems of criminal procedure vary widely. There is no single preferred pretrial procedure, and the nature of the probable cause determination usually will be shaped to accord with a State's pretrial procedure viewed as a whole." 420 U.S. at 123, 95 S.Ct. at 868.

Thus, the Court continued:

> "While we limit our holding to the precise requirement of the Fourth Amendment, we recognize the desirability of flexibility and experimentation by the States. It may be found desirable, for example, to make the probable cause determination at the suspect's first appearance before a judicial officer [citation] or the determination may be incorporated into the procedure for setting bail or fixing other conditions of pretrial release. In some states, existing procedures may satisfy the requirement of the Fourth Amendment. Others may require only minor adjustment, such as acceleration of existing preliminary hearings." 420 U.S. at 123-124, 95 S.Ct. at 868; fn. omitted.

Significantly, in this regard, the Court noted that the Uniform Rules of Criminal Procedure permitted a person arrested without a warrant to obtain a probable cause hearing "without unnecessary delay" at the first appearance before a magistrate and that the ALI Model Code of Pre-Arraignment Procedure allowed a magistrate to make a probable cause determination at the time of first appearance and that a magistrate was required to make

such a determination within two "court days" of the first appearance. See 420 U.S. at 124, fn. 25, 95 S.Ct. at 868.[11]

In *Schall v. Martin*, 467 U.S. 253, 104 S.Ct. 2403, 81 L.Ed.2d 207, this Court applied *Gerstein* in rejecting a due process attack on a state statute which allowed juveniles to be detained for a delinquency determination for three, and sometimes as much as six days prior to receiving a probable cause determination. The Court noted that in light of *Gerstein*, this delay was permissible, emphasizing that in *Gerstein* "[w]e did not . . . mandate a specific time table," and in fact had recognized " 'the desirability of flexibility and experimentation by the states.' " 467 U.S. at 275, 104 S.Ct. at 2415. Critical to the Court's determination was the fact that "preventative detention serves an important and legitimate function in the juvenile justice system" (467 U.S. at 272, 104 S.Ct. at 2414), and that the delays occasioned by the process were more than offset by the considerable procedural and substantive protections afforded a detainee at the eventual hearing in which probable cause was determined. As the Court observed:

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[11] In *Gerstein*, the Court referred to the tentative draft of the ALI Model Code of Pre-Arraignment Procedures. The final draft was virtually unchanged from the tentative draft, section 310.1(6) again allowing a magistrate to determine probable cause at the defendant's appearance within 24 hours of arrest, but not *requiring* it to be done until an additional 48 hours later, i.e., within 72 hours of arrest. See ALI Model Code of Pre-Arraignment Procedure (American Law Institute 1975), sections 310.1(6), 310.1(8), and 310.2(2). Indeed, the commentary to section 310 specifically states that the final draft was intended to reflect this Court's decision in *Gerstein*.

"In many respects, the [act] provides far more pre-detention protection for juveniles than we found to be constitutionally required for a probable-cause determination for adults in *Gerstein*." 467 U.S. at 275, 104 S.Ct. 2415. These included the right to counsel, the right to confront and challenge the charges against the juvenile and the ability to cross-examine witnesses. See 467 U.S. at 275-277, 104 S.Ct. at 2416-2417. The Court therefore found nothing inconsistent with the three- and perhaps six-day delay in providing juveniles a probable cause determination under the law in question in light of the fact "[t]he Court in *Gerstein* indicated approval of pretrial detention procedures that supplied a probable-cause hearing within five days of the initial detention," and the "brief delay in the probable cause hearing [here] may actually work to the advantage of the juvenile since it gives his counsel, usually appointed at the initial appearance . . . time to prepare." 467 U.S. at 277, fn. 28, 104 S.Ct. at 2416.

Consistent with *Gerstein* and *Schall*, the Second Circuit in *Williams v. Ward*, 845 F.2d 374 (2d Cir. 1988), cert. den. 488 U.S. 1020, 109 S.Ct. 818, 102 L.Ed.2d 807 (1989) expressly recognized that delays resulting from providing pre-trial detainees with greater procedural protections in the context of a more extensive adversarial hearing were not per se unreasonable under the Fourth Amendment. Thus, the Court upheld probable cause determinations conducted at the time of arraignment which, in many cases, did not occur until 72 hours after arrest. The Court found that the delays resulting from providing these more extensive proceedings were reasonable in light of the significant constitutional protections afforded arrestees:

> "[T]he use of arraignment procedures to determine probable cause provides members of the plaintiff class with benefits that would not be available if probable cause were determined through the use of minimal ex parte procedures immediately after the completion of the 'administrative steps incident to arrest.' In particular, the accused is present at the arraignment and has the benefit of counsel in attacking the sufficiency of the charging instrument. More importantly, however, arraignments involve far more than probable-cause determinations. Before arraignment, prosecutors both review the appropriateness of the charge against an arrestee and make a recommendation with regard to the possibility of pretrial release. In addition, the arrestee, with the assistance of defense counsel, may negotiate a final disposition of the arrestee's case at the arraignment. Indeed, over one-third of all cases reach their final disposition at arraignment through dismissals, pleas of guilty, or adjournments in contemplation of dismissal. In the other cases, the court may set bail or other conditions of pretrial release. [p] We believe that the procedural benefits provided to arrestees under New York City's arraignment system justify constitutionally arrest-to-arraignment periods of 72 hours in length." 845 F.2d at 387.

As the Second Circuit recognized in *Williams*, in light of the principles articulated in *Gerstein* and *Schall*, it is simply untenable for plaintiffs to assert and the Ninth Circuit to conclude that it is impermissible for a state or public entity to delay a probable cause hearing based upon the additional time necessary to provide warrantless arrestees with additional constitutional protections afforded by existing pre-trial procedures. While *Gerstein* did not require these additional protections to accompany

the probable cause hearings, it clearly did not forbid them. If anything, as noted above, the Court *invited* states to merge the two procedures and recognized that providing such procedures would necessarily cause some delay.

Quite simply, as this Court recognized in *Gerstein*, and reaffirmed in *Schall*, to the extent a state or public entity elects to conduct probable cause determinations for warrantless arrestees in the context of existing pre-trial procedures which provide the arrestee with additional constitutional protections, as well as a more searching inquiry into not simply the propriety of the arrest, but the validity of charges against the individuals, the delays attending this extended procedure are not per se unreasonable. As we discuss below, consistent with *Gerstein*, and the dictates of the Fourth Amendment, the County of Riverside provides warrantless arrestees the opportunity to receive a probable cause determination at the time of arraignment which, under California law, must be conducted without unnecessary delay and in any event no later than two days following arrest, excluding weekends and holidays. The arraignment procedures provide arrestees with significantly greater constitutional protections than available at the ex parte proceedings imposed by the Ninth Circuit in this case and thus under *Gerstein* and *Schall*, amply justify any slight delay necessitated by providing these more extensive procedures.

B. Consistent With The Fourth Amendment As Interpreted In Gerstein v. Pugh, The County Of Riverside, Within The Framework Of California Law, Has Incorporated Probable Cause Determinations Into Arraignment Proceedings Which By Their Nature Necessitate Some Delay In The Processing Of Arrestees, But Afford Pre-Trial Detainees Additional Constitutional Protections And Avoid The Severe Disruption Of State Criminal Justice Systems Which Would Result From The Creation Of A Separate Tier Of Judicial Proceedings Devoted Solely To Determining Probable Cause.

Following this Court's decision in *Gerstein*, the California Supreme Court expressly addressed the question of precisely when probable cause determinations should be made under California law, consistent with the requirements of the Fourth Amendment as articulated in *Gerstein*. In *In re Walters*, 15 Cal.3d 738, 126 Cal.Rptr. 239, 543 P.2d 607, an individual arrested without a warrant for committing a misdemeanor filed a petition for habeas corpus asserting he had not been provided with a prompt probable cause determination as required by *Gerstein*. The California Supreme Court denied the petition, finding that the petitioner had received a prompt probable cause determination. In so holding, the Court declared that the constitutional requirements articulated in *Gerstein* would be met if persons arrested for a misdemeanor without a warrant received a probable cause determination at the time of arraignment, which, under California law, must take place without unnecessary delay, and no later than two days after a suspect's arrest. See 15 Cal.3d at 750 ["(t)he determination of probable cause is to be made a matter of record at the time of arraignment or bail setting

which usually takes place simultaneously within two days after a misdemeanor suspect's arrest. . . . [W]e consider arraignment to be the most appropriate stage of the proceedings at which to make a judicial determination of probable cause . . . "]. The California Supreme Court's determination that arraignment would be the most appropriate time in which to conduct a probable cause determination was not surprising in light of the fact that the Court had earlier determined that the issue of probable cause is a matter properly determined upon an individual's first appearance before a magistrate. See *People v. Powell*, 67 Cal.2d 32, 60, 59 Cal.Rptr. 817, 834, 429 P.2d 137 (1967) [first appearance provides opportunity "to place the issue of probable cause for the arrest before a judicial officer . . . "].

In light of the California Supreme Court's decision in *In re Walters*, the California Legislature enacted Penal Code section 991. Section 991 requires an individual arrested for a misdemeanor without a warrant to receive the opportunity for a probable cause determination at the time of arraignment. Appendix, p. 6a. Penal Code section 825, in turn, provides that arraignment must take place without "unnecessary delay" and in no event more than two days after arrest, excluding Saturday, Sunday and holidays with an extension to the next court day if the two days expire at a time when the court is not in session. Appendix, p. 1a. As the California Supreme Court observed in *In re Walters*, under California law arraignment typically constitutes a prisoner's first appearance before a magistrate and the time limits imposed by Penal Code section 825 are intended to comply with the

requirements of article I, section 14, of the California Constitution guaranteeing that all felony arrestees shall be "taken without unnecessary delay before a magistrate."

At arraignment, an arrestee is entitled to be represented by counsel and if he cannot afford an attorney one will be appointed for him. *People v. Carlon*, 161 Cal.App.3d 1193, 1196, 208 Cal.Rptr. 18 (1984); California Penal Code section 987. In addition, the prisoner and his attorney are entitled to inspect all police, arrest and crime reports submitted to the magistrate (Penal Code 859, 1430) and are allowed to examine the formal charge filed with the magistrate. (Penal Code 988.) The magistrate may also set bail at this time, if not previously done. California Const., article 1, section 12; California Penal Code sections 1270-1271. The magistrate then requests and accepts any plea. As noted above, under Penal Code section 991 and *In re Walters*, at arraignment a magistrate may also determine probable cause if requested to do so.[12]

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[12] Plaintiffs have maintained throughout this litigation that while Penal Code section 991 and *In Re Walters* may require probable cause determinations to be made at the time of arraignment in misdemeanor cases, felony arrestees do not obtain a probable cause determination until some 10 court days after arraignment, at the time of preliminary hearing. See California Penal Code § 859b, 871. As previously discussed, the County of Riverside construes *In re Walters* as suggesting that arraignment is the proper time to provide warrantless arrestees with a probable cause determination regardless of the nature of the charges against them, and at the time the motion for preliminary injunction was filed, was following this policy. 1 JA 120-129. While defendants note that neither *Gerstein* nor

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In sum, the California arraignment procedure constitutes the very sort of existing pre-trial state procedure that would best accommodate a probable cause hearing without the necessity of creating an entirely new tier of proceedings. It is marked by precisely those additional constitutional protections and more extensive inquiry that this Court found sufficient to justify a three- to six-day delay in providing probable cause determinations in *Schall*.

Moreover, California law itself guarantees that arraignments be conducted in speedy fashion, thus avoiding unnecessary delay. As noted above, California Penal Code section 825 requires that a defendant must in all cases be taken before a magistrate for arraignment "without unnecessary delay," with an outside two-day time period, excluding Saturdays, Sundays and holidays.[13] Penal Code section 849 specifically requires all

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Schall necessarily rule out a constitutionally proper probable cause determination being made at that the time of a preliminary hearing delayed for as much as 14 days after arrest in light of the considerable protections afforded an arrestee at such hearings, as noted above, throughout this litigation, the County of Riverside has steadfastly agreed to provide such hearings at the time of first appearance before a magistrate at arraignment and not at preliminary hearing. The district court order affirmed by the Ninth Circuit in this case, of course, however, precludes the County from providing such determinations even within the short two-day time period of arraignment.

[13] There is currently a division among the California Courts of Appeal concerning interpretation of the phrase "two

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warrantless arrestees to be taken before a magistrate "without unnecessary delay." Willful failure to do so is punishable as a misdemeanor. Penal Code section 145. California courts, in turn, have narrowly interpreted

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days" in Penal Code section 825. One line of cases interprets the term to mean 48 hours, so that an individual arrested on a Monday between 9:00 a.m. and 4:00 p.m., must be arraigned by the time of arrest on Wednesday. If arrested after 4:00 p.m. on a Monday, for example, at 6:00 p.m., the individual would have to be arraigned by 4:00 p.m., on Thursday – the 48 hours expiring at 6:00 p.m., on Wednesday, a time when "the court in which the magistrate is sitting is not in session," thus extending the period to the "next regular court session of the judicial day immediately following." Penal Code section 825; see *People v. Chambers*, 276 Cal.App.2d 89, 103, 80 Cal.Rptr. 672 (1969), cert. denied, 402 U.S. 999, 91 S.Ct. 2175 (1971); *People v. Lee*, 3 Cal.App.3d 514, 521, 83 Cal.Rptr. 715 (1970); *People v. Ross*, 236 Cal.App.2d 364, 368, 46 Cal.Rptr. 41 (1965); *Youngblood v. Gates*, 200 Cal.App.3d 1302, 1335-1337, 246 Cal.Rptr. 775 (1988) [George, J. dissenting]. Another line of cases interprets the term "two days" to mean two *court* days, so that an individual arrested at 6:00 p.m, on a Monday would have to be arraigned by the close of business on Wednesday – the second day following the arrest upon which the courts are open. See *Youngblood v. Gates*, 200 Cal.App.3d 1302, 246 Cal.Rptr. 775 and cases cited therein. At the time of the hearing on the preliminary injunction, the County of Riverside interpreted the phrase "two days" as 48 hours, so that if the 48-hour period expired at a time when the courts were closed, the probable cause hearing would take place on the next court day. See 1 JA 81. While the case was on appeal, however, the County of Riverside advised the Ninth Circuit that the County was currently using the "two court day" standard enunciated in *Youngblood v. Gates*, 202 Cal.App.3d 1302, 240 Cal.Rptr. 775. In any event, this conflict is largely irrelevant to the instant case as the 36 hour outside period set by the Ninth Circuit would be violated by the County's compliance with either interpretation of section 825.

"unnecessary delay," thus making it clear that the two-day time period is an outside limitation, but that arraignment within that time period does not necessarily mean that the individual is taken before a magistrate without "unnecessary delay." For example, if delay is solely the result of improper actions of law enforcement officials to elicit statements in the absence of counsel or other procedural protections, arraignment within the outside time period of Penal Code section 825 will not be sufficient. See *People v. Powell*, 67 Cal.2d 32, 59-60, 59 Cal.Rptr. 817, 429 P.2d 137 ["We have . . . stressed that section 825 does not authorize even a two-day detention in all cases, but instead places a limit upon what may be considered a necessary delay, and a detention of less than two days if unreasonable under the circumstances, is in violation of the statute"]; *Dragna v. White*, 45 Cal.2d 469, 473, 289 P.2d 428 (1955) [same]. At the same time, however, California courts have recognized that delay inherent in the arraignment procedure itself, i.e., time consumed by investigating and preparing the necessary legal documents, such as the accusatory pleading or waiting opening of the courts themselves, is not per se unreasonable. For example, in *People v. Johnson*, 85 Cal.App.3d 684, 149 Cal.Rptr. 661 (1978), the California Court of Appeal rejected a contention by an individual arrested on Thursday morning, but not arraigned until the following Monday morning, that there was an unnecessary delay within the meaning of section 825, in light of the fact that it was entirely plausible that the delay was caused by the need to investigate and prepare the accusatory pleading accompanying the arraignment:

> "[U]sing the time allowed to prepare and evaluate a case before filing a complaint is not prohibited. Where a delay within the 48-hour period occurs in order to evaluate a case the delay is not unnecessary. [Citation.] There may be other valid reasons for not arraigning an arrested person immediately upon arrest and for using all or the greater part of the 48 hours allowed. Some of those reasons may include study and investigation to make certain that grounds exist to support a criminal complaint. [Citation.] A delay which is occasioned by the conscientious performance of police and which is utilized for the purposes of clerical and administrative needs and not used solely for the purposes of eliciting damaging statements from the accused is not an unreasonable delay." 85 Cal.App.3d at 689.

In light of the significant substantive and procedural protections afforded warrantless arrestees under California law, the County of Riverside plainly does not "unreasonably" delay providing such arrestees with probable cause hearings. Consistent with *In re Walters*, the County of Riverside conducts probable cause determinations for warrantless arrestees at the time of arraignment, i.e., within "two days" of arrest, excluding Saturdays, Sundays and holidays. Prior to arraignment, all arrestees are shown a video advising them of their rights during the arraignment proceeding, including a clear instruction that they are entitled to a probable cause determination at the time of arraignment should they or their attorney desire such a determination. 1 JA 120-129. As review of the booking records submitted by the County in opposition to the motion for preliminary injunction reveals, the County does not unnecessarily delay arraignment for prisoners. Rather, prisoners are arraigned in a reasonable

time frame that allows the procedures necessary to conduct arraignment to be completed, for example, preparation of arrest reports and the filing of a criminal complaint to be reviewed by a judge sitting in open court, as well as securing counsel for defendants and for the People. At the same time, delay does necessarily occur during those time periods in which courts are not in session under California law, i.e., on Saturdays, Sundays and holidays. When courts are again in session, arraignments are promptly conducted. Indeed, as the evidence submitted by plaintiffs in support of the motion for preliminary injunction and defendants' own booking records reveals, those warrantless arrestees subject to extended detention are typically those arrested on a weekend, who must wait until Monday, Tuesday or Wednesday before being taken before a judicial officer.

For example, as review of the County's evidence indicates, individuals arrested with or without a warrant on a Saturday night or early Sunday morning and who are not released on their own recognizance shortly after arrest, typically appear in court by no later than Tuesday and others, in fact, are presented to the magistrate for arraignment Monday. While some arrestees are not presented for arraignment until Wednesday, this is still within the "two day" period provided by California law and there is no evidence to suggest that a delay even to this point is the result of anything more than that which necessarily attends processing hundreds of individuals through a court system that is itself already severely burdened.[14] Indeed, conspicuously, plaintiffs provided no

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[14] Review of the most recent booking statistics submitted to the district court for March 1989 reveals that arraignment

(Continued on following page)

evidence whatsoever that the County was unnecessarily delaying arraignment. Rather, plaintiffs simply argued and the district court and Ninth Circuit agreed, that any delay caused by incorporating probable cause hearings into arraignment is *per se* unreasonable, since a probable cause determination can be made without providing the additional protections and procedures of a full arraignment hearing. As discussed above, in light of *Gerstein* and *Schall*, this contention is simply untenable.

Consistent with the Fourth Amendment as interpreted by this Court in *Gerstein*, the County of Riverside has incorporated probable cause determinations into arraignment, a pre-trial procedure which itself provides greater constitutional protections and concrete benefits to pretrial arrestees than the cursory ex parte proceedings embraced by the district court and imposed by the Ninth Circuit in this case. While providing such hearings at arraignment may cause some delay, it cannot be assumed that this delay is an improper punishment of those in custody to the extent it is "reasonably related to a legitimate governmental objective. . . . " *Bell v. Wolfish*, 441 U.S.

(Continued from previous page)

proceedings for those arrested with and without warrants typically takes place within two court days of arrest. Of the approximately 70 individuals who were not outright released or sentenced prior to first appearance at arraignment, 23 were arraigned within one court day of arrest (App., pp. 8a-9a), 23 in two court days (App., pp. 9a-10a), and 16 on the third court day (App., p. 10a) – the outside time limit under any interpretation of California Penal Code section 825 (48 hours after arrest, with an extension to the next court day if the period expires when court is not in session). See footnote 13.

520, 539, 99 S.Ct. 1861, 1874, 60 L.Ed.2d 447. There is nothing illegitimate about a public entity's attempt to provide warrantless arrestees with greater procedural and substantive protections at a hearing that may offer benefits beyond a simple determination of probable cause. At the same time, a public entity clearly has a legitimate interest in maintaining an efficient court system avoiding needless multiplicity and duplication of judicial hearings, which unnecessarily consumes judicial time and resources that may slow the process to the detriment of all who pass through it without providing any compensating significant benefit to any category of arrestee.[15]

Moreover, these are precisely the sort of decisions that states and their local entities are best equipped to make. As this Court has cautioned with respect to the inquiries of federal courts into the conditions of pre-trial detention, "[c]ourts must be mindful that these inquiries

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[15] For example, as the County demonstrated in opposition to the motion for preliminary injunction, the 36-hour ex parte probable cause hearings imposed by the district court in an Orange County case, *Scott v. Gates*, from which the 36-hour time period in this case was derived, has not resulted in any significant number of individuals released for lack of probable cause. Despite the figures submitted by plaintiffs in support of their motion for preliminary injunction, after taking into account the fact that arrestees are often released on their own recognizance prior to the hearing officer's review of the arrest report or that initial findings of "no probable cause" are later reversed upon the arresting officer's providing the hearing officer with additional facts to support the arrest, release figures for lack of probable cause run no more than approximately 6%. 2 JA 161.

spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility." *Bell v. Wolfish*, 441 U.S. at 539, 99 S.Ct. at 1874. Similarly, a federal court should not, as the district court and Ninth Circuit did here, essentially substitute their judgment for that of the California Legislature or indeed the local Riverside officials as to both the appropriate form and time frame in which a probable cause determination will be provided to warrantless arrestees. As this Court recognized in *Rizzo v. Goode*, 423 U.S. 362, 378-379, 96 S.Ct. 598, 607-608, 46 L.Ed.2d 561, injunctive relief in these circumstances conflicts with " 'the well-established rule that the Government has traditionally been granted the widest latitude in the "dispatch of its own internal affairs. . . . " ' " As the Court observed in *O'Shea v. Littleton*, 414 U.S. at 502, 94 S.Ct. at 679, "A major continuing intrusion of the equitable power of the federal courts into the daily conduct of state criminal proceedings is in sharp conflict with the principles of equitable restraint which this Court has recognized. . . . "

In the instant case, both the district court and the Ninth Circuit ignored the "special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law." *Stefanelli v. Minard*, 342 U.S. 117, 120, 72 S.Ct. 118, 120, 96 L.Ed. 138 (1951); *City of Los Angeles v. Lyons*, 461 U.S. at 112, 103 S.Ct. at 1670. As this Court held in *Gerstein* and reaffirmed in *Schall*, a state is free to incorporate probable cause determinations into existing pre-trial proceedings which, by their very nature, may be delayed for a reasonable period of time, in order to provide an arrestee with

additional constitutional protections and benefits and assure efficient operation of the criminal justice system. Because neither the district court nor the Court of Appeals in this case allowed any reasonable delay occurring as the result of incorporating such hearings into existing procedures to be taken into account, the order granting preliminary injunction was erroneous. Defendants County of Riverside and Cois Byrd therefore request the Court to reverse the judgment of the Ninth Circuit and the district court.

CONCLUSION

For the foregoing reasons, defendants County of Riverside and Cois Byrd request the Court to reverse the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

Date: November 15, 1990.

Respectfully submitted,

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APPENDIX

California Penal Code

§ 825. The defendant must in all cases be taken before the magistrate without unnecessary delay, and, in any event, within two days after his arrest, excluding Sundays and holidays; provided, however, that when the two days prescribed herein expire at a time when the court in which the magistrate is sitting is not in session, such time shall be extended to include the duration of the next regular court session on the judicial day immediately following.

After such arrest, any attorney at law entitled to practice in the courts of record of California, may, at the request of the prisoner or any relative of such prisoner, visit the person so arrested. Any officer having charge of the prisoner so arrested who willfully refuses or neglects to allow such attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow any attorney to visit the prisoner when proper application is made therefor, shall forfeit and pay to the party aggrieved the sum of five hundred dollars ($500), to be recovered by action in any court of competent jurisdiction.

California Penal Code

§ 859. When the defendant is charged with the commission of a public offense over which the superior court has original jurisdiction, by a written complaint subscribed under oath and on file in a court within the county in

which the public offense is triable, he or she shall, without unnecessary delay, be taken before a magistrate of the court in which the complaint is on file. The magistrate shall immediately deliver to the defendant a copy of the complaint, inform the defendant that he or she has the right to have the assistance of counsel, ask the defendant if he or she desires the assistance of counsel, and allow the defendant reasonable time to send for counsel. However, in a capital case, the court shall inform the defendant that the defendant must be represented in court by counsel at all stages of the preliminary and trial proceedings and that the representation will be at the defendant's expense if the defendant is able to employ counsel or at public expense if he or she is unable to employ counsel, inquire of him or her whether he or she is able to employ counsel and, if so, whether the defendant desires to employ counsel of the defendant's choice or to have counsel assigned for him or her, and allow the defendant a reasonable time to send for his or her chosen or assigned counsel. The magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the judicial district in which the court is situated. The officer shall, without delay and without a fee, perform that duty. If the defendant desires and is unable to employ counsel, the court shall assign counsel to defend him or her; in a capital case, if the defendant is able to employ counsel and either refuses to employ counsel or appears without counsel after having had a reasonable time to employ counsel, the court shall assign counsel to defend him or her. If it appears that the defendant may be a minor, the magistrate shall ascertain whether that is the case, and if

the magistrate concludes that it is probable that the defendant is a minor, he or she shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor. The prosecuting attorney shall deliver to, or make accessible for inspection and copying by, the defendant or counsel, copies of the police, arrest, and crime reports, upon the first court appearance of counsel, or upon a determination by a magistrate that the defendant can represent himself or herself. If unavailable to the prosecuting attorney at the time of that appearance or determination, the reports shall be delivered within two calendar days. Portions of those reports containing privileged information need not be disclosed if the defendant or counsel has been notified that privileged information has not been disclosed. If the charges against the defendant are dismissed prior to the time the above-mentioned documents are delivered or made accessible, the prosecuting attorney need not deliver or make accessible those documents unless otherwise so compelled by law. The court shall not dismiss a case because of the failure of the prosecuting attorney to immediately deliver copies of the reports or to make them accessible for inspection and copying.

California Penal Code

§ 859b. At the time the defendant appears before the magistrate for arraignment, if the public offense is a felony to which the defendant has not pleaded guilty in accordance with Section 859a, the magistrate, immediately upon the appearance of counsel, or if none

appears, after waiting a reasonable time therefor as provided in Section 859, shall set a time for the examination of the case and shall allow not less than two days, excluding Sundays and holidays, for the district attorney and the defendant to prepare for the examination. The magistrate shall also issue subpoenas, duly subscribed, for witnesses within the state, required either by the prosecution or the defense.

Both the defendant and the people have the right to a preliminary examination at the earliest possible time, and unless both waive that right or good cause for a continuance is found as provided for in Section 1050, the preliminary examination shall be held within 10 court days of the date the defendant is arraigned or pleads, whichever occurs later.

Whenever the defendant is in custody, the magistrate shall dismiss the complaint if the preliminary examination is set or continued beyond 10 court days from the time of the arraignment or plea and the defendant has remained in custody for 10 or more court days solely on that complaint, unless either of the following occur:

(a) The defendant personally waives his or her right to preliminary examination within the 10 court days.

(b) The prosecution establishes good cause for a continuance beyond the 10-court-day period.

For purposes of this subdivision, "good cause" includes, but is not limited to, those cases involving allegations that a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or in Section 11165.6 has occurred and the prosecuting attorney

assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. Any continuance under this paragraph shall be limited to a maximum of three additional court days.

If the preliminary examination is set or continued beyond the 10-court-day period, the defendant shall be released pursuant to Section 1318 unless:

(1) The defendant requests the setting of continuance of the preliminary examination beyond the 10-court-day period.

(2) The defendant is charged with a capital offense in a cause where the proof is evident and the presumption great.

(3) A witness necessary for the preliminary examination is unavailable due to the actions of the defendant.

(4) The illness of counsel.

(5) The unexpected engagement of counsel in a jury trial.

(6) Unforeseen conflicts of interest which require appointment of new counsel.

The magistrate shall dismiss the complaint if the preliminary examination is set or continued more than 60 days from the date of the arraignment or plea, unless the defendant personally waives his or her right to a preliminary examination within the 60 days.

California Penal Code

§ 991. (a) If the defendant is in custody at the time he appears before the magistrate for arraignment and, if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant, shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof.

(b) The determination of probable cause shall be made immediately unless the court grants a continuance for good cause not to exceed three court days.

(c) In determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference thereto, which, if based on information and belief, state the basis for such information, or any other documents of similar reliability.

(d) If, after examining these documents, the court determines that there exists probable cause to believe that the defendant has committed the offense charged in the complaint, it shall set the matter for trial. If the court determines that no such probable cause exists, it shall dismiss the complaint and discharge the defendant.

(e) Within 15 days of the dismissal of a complaint pursuant to this section the prosecution may refile the complaint.

A second dismissal pursuant to this section is a bar to any other prosecution for the same offense.

Fourth Amendment to the United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Article III

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; – to all Cases affecting Ambassadors, other public Ministers and Counsels; – to all Cases of admiralty and maritime Jurisdiction; – to Controversies to which the United States shall be a Party; – to Controversies between two or more States; – between a State and Citizens of another State; – between Citizens of different States, – between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

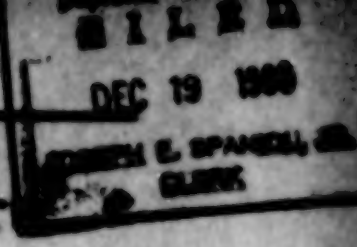
BREAKDOWN OF ARRAIGNMENT TIME FOR ARRESTEES IN RIVERSIDE COUNTY CENTRAL JAIL FOR 72 HOURS BETWEEN 0001 HOURS, SUNDAY, MARCH 19, 1989, THROUGH 2400 HOURS, TUESDAY, MARCH 21, 1989

	BOOKING NUMBER	JOINT APPENDIX REFERENCE
1 COURT DAY		
	H112310	2 JA 173
	H116874	2 JA 174
	H116941	2 JA 177
	H116949	2 JA 181
	H116950	2 JA 181
	H116956	2 JA 184
	H117070	2 JA 200
	H117061	2 JA 213
	H117076	2 JA 219-220
	H117084	2 JA 223
	H117092	2 JA 227
	H116884	2 JA 233
	H117363	2 JA 243
	H117375	2 JA 248

	BOOKING NUMBER	JOINT APPENDIX REFERENCE
	H117383	2 JA 252
	H117384	2 JA 25?
	H117390	2 JA 254-255
	H117396	2 JA 257
	H117403	2 JA 261
	H117407	2 JA 262-263
	H117413	2 JA 265
	H117428	2 JA 272
	H117388	2 JA 275
Total	23	
2 COURT DAYS		
	H116940	2 JA 177
	H116948	2 JA 180
	H116961	2 JA 186
	H116967	2 JA 188-189
	H116969	2 JA 189-190
	H116971	2 JA 190
	H116976	2 JA 193
	H090569	2 JA 198
	H112312	2 JA 200
	H112322	2 JA 202
	H112325	2 JA 202
	H116886	2 JA 206
	H117063	2 JA 214
	H117064	2 JA 214-215
	H117079	2 JA 221
	H117083	2 JA 223
	H117356	2 JA 230
	H117370	2 JA 246
	H117379	2 JA 250
	H117380	2 JA 251
	H117402	2 JA 260
	H117427	2 JA 272
	H117433	2 JA 274-275
Total	23	

	BOOKING NUMBER	JOINT APPENDIX REFERENCE
3 COURT DAYS		
	H090560	2 JA 170
	H090563	2 JA 171
	H116939	2 JA 176
	H116968	2 JA 189
	H116979	2 JA 194
	H116880	2 JA 205
	H117090	2 JA 226
	H11357	2 JA 231
	H117358	2 JA 231
	H116889	2 JA 235
	H116899	2 JA 240
	H116901	2 JA 240-241
	H117377	2 JA 249
	H117393	2 JA 256
	H117426	2 JA 271
	H117432	2 JA 274
Total	16	
OVER P.C. 825 PERIOD		
	H116958	2 JA 185
	H116963	2 JA 187
	H116879	2 JA 205
	H117068	2 JA 216
	H117082	2 JA 222
	H116885	2 JA 234
	H117360	2 JA 241
	H117409	2 JA 263-264
Total	8	

No. 89-1817



In the Supreme Court
OF THE
United States

OCTOBER TERM, 1990

COUNTY OF RIVERSIDE, and COIS BYRD,
SHERIFFS OF RIVERSIDE COUNTY,
Petitioners,

VS.

DONALD LEE MCLAUGHLIN, et al.,
Respondents.

On Writ of Certiorari To The United States Court of Appeals For the Ninth Circuit

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No. 89-1817

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BRIEF FOR THE RESPONDENTS

STATEMENT OF THE CASE

A. Facts Relating To Standing.

The Second Amended Complaint (the operative pleading) was filed on July 25, 1988.[1] (2 J.A. 337.) That complaint named Johnny E. James,[2] Diana Ray Simon, and Michael Scott Hyde as respondents (hereinafter referred to as "plaintiffs"), individually and as class representatives. It alleged that each of the plaintiffs had

[1]Record references in this form are to the volume (1 or 2) and the page number[s] of the Joint Appendix.

[2]This plaintiff was originally named in the Second Amended Complaint as "Johnny E. Jones." (1 J.A. 2) On August 9, 1988, by court order, the name was corrected to "Johnny E. James." (2 J.A. 337).

been arrested without a warrant, and had received neither prompt probable cause nor bail hearings, and was still in custody. (1 J.A. 3.) The complaint further alleged that the petitioners (hereinafter referred to as "defendants" or "the County") "engaged and conspired in the illegal conduct herein mentioned to the injury of plaintiffs, and deprived the plaintiffs of the rights, privileges and immunities secured to plaintiffs by the First, Fourth, Eighth and Fourteenth Amendments to the Constitution of the United States and the laws of the United States, pursuant to the practice and policy of defendant County." (1 J.A. 4-5.)

The complaint also alleged that the Riverside County Jail was severely overcrowded, that plaintiffs were often forced to sleep on the floor of "triple-bunked" cells, were denied adequate access to counsel and adequate visitation, and were subjected to excessive force by guards. (1 J.A. 5) In addition it was alleged that the deprivations suffered by the plaintiffs were the result of ongoing practices of defendants. The complaint sought a halt to the excessive detention of warrantless arrestees under the conditions described above. (1 J.A. 5.)

The class on whose behalf the complaint was filed consists "of all present and future prisoners in the Riverside County Jail including those pre-trial detainees arrested without warrants and held in the Riverside County Jail from August 1, 1987 to the present, and all such future detainees who have been or may be denied prompt probable cause, bail or arraignment hearings." It was alleged that the named plaintiffs will fairly and adequately protect the interests of the class. (1 J.A. 7.) The complaint's prayer simply asks for "prompt probable cause, bail and arraignment hearings." (1 J.A. 7.)

Previously on November 20, 1987 defendants had filed a motion to dismiss the First Amended Complaint; that motion was taken off calendar on August 11, 1988 after the Second Amended Complaint was accepted and filed (2 J.A. 337). Defendants' answer to the Second Amended Complaint was filed on August 23, 1988. (2 J.A. 337.) On October 13, 1987, plaintiffs had filed a motion to certify the class which was pending when the Second Amended Complaint and Answer thereto were filed. For various reasons the court continued the motion on October 29, 1987, November 10, 1987, (until 30 days after the court ruled on defendants' motion to dismiss) and September 10, 1988. (J.A. 335-338) On November 15, 1988, the court ordered the class certified as described in the Second Amended Complaint. (2 J.A. 338.) Plaintiffs' Motion for Preliminary Injunction was filed on March 3, 1989. (1 J.A. 16.) The plaintiffs sought an injunction ordering that "all persons arrested without a warrant and detained in the custody of the Riverside County Jails, County of Riverside, California, shall, within thirty-six (36) hours of the time of the arrest, be taken before a judge, magistrate, court commissioner, or other authorized judicial officer, for a hearing on determination of probable cause for detention." (1 J.A. 21.) The preliminary injunction was granted on April 19, 1989, consistent with plaintiffs' moving papers. (2 J.A. 339.)

B. Facts Relating to Arraignment Process.

After a person is arrested and brought into the Riverside County Main Jail,[3] the arraignment "usually takes place on the last day for arraignment." (1 J.A. 82.) The

[3]The Riverside County Main Jail was originally rated by the Board of Corrections of the State of California to hold 357 prisoners. At the time of the injunction hearing there were only 416 beds in the prison, yet, there were over 650 prisoners in the facility. (2 J.A. 318)

arraignment process differs slightly between misdemeanors and felonies. For both, prisoners are collected and held within the chapel of the jail *en masse* prior to arraignment. Those charged with misdemeanors are arraigned via video camera connected from the jail to the courthouse at 10:30 a.m. every weekday except holidays. (1 J.A. 125.) No public defenders or other attorneys are present in the jail for misdemeanor arraignments. (1 J.A. 120-125.)[4] "Prior to arraignments, the persons in custody are shown a video presentation on the television screen which shows a judge of the municipal court who advises these persons of certain rights they have." (1 J.A. 125.) Near the conclusion of the video presentation, misdemeanor defendants are informed as follows: "Further, you have the right to have a hearing to determine whether there was probable cause for your arrest, *if you request one at the time of this hearing.*" (Emphasis added.) (1 J.A. 128.) After the video presentation, the judge takes the pleas. At a later date, the prisoners first come into contact with the public defender's office.[5] (1 J.A. 123, 128.)

Most of the prisoners who remain within the jail are charged with felonies (2 J.A. 299). They are arraigned at 1:30 p.m. each non-holiday week day. "A Deputy Public Defender is present with the defendant during felony

[4]According to the declarations of Judge Taylor, Presiding Judge of the Riverside Municipal Court (1 J.A. 121-124), and Lt. Peter Kiyasu of the Riverside County Sheriff's Department (1 J.A. 125-129), Public Defenders are only provided for felony arraignments. Contrary to the statements made in the Amicus Brief by the County of Riverside p. 8, there are no attorneys provided at misdemeanor arraignments.

[5]The misdemeanor charged prisoners are told in the video that: "If you have any other questions about your rights, you should ask your attorney when you appear in court and discuss your matter with your attorney." (1 J.A. 123, 128.)

arraignment." (1 J.A. 125.) In the final sentence of the felony video the prisoners are informed: "Finally, you have a right to have a hearing to determine whether there was probable cause for your arrest *within a reasonable time, at your request.*" (1 J.A. 124, 129.) (Emphasis added) This generally does not occur until ten (10) days after the arraignment at the preliminary hearing. (1 J.A. 123-124, 128-129, 2 J.A. 299.)[6]

C. Calculating Time Periods for Arraignment.

The County relies exclusively on the *arraignment* procedures to support its claim of compliance with *Gerstein*. There is no evidence indicating the actual procedure used to determine probable cause for arrest.

The County stipulated that "ordinarily the first appearance before a judge or commissioner of a person arrested without a warrant . . . in Riverside County, is at the arraignment." (1 J.A. 82.) It further stipulated that "if criminal charges have not been filed, the in-custody arrestee, without warrants or holds, is released at about 5:00 p.m. on the last day for arraignment. If criminal charges have been filed the arraignment takes place on the last day for arraignment." (1 J.A. 82.) The court below found that in "Riverside County the first judicial appearance of a prisoner arrested on a Thursday or Friday occurs the following week. If there is an intervening holiday as much as five (5) days of delay after arrest occurs." (2 J.A. 332.) No arraignments are held on Saturdays, Sundays or holidays (1 J.A. 120.)

Prisoners spend as much as 96 hours or more in custody before receiving any kind of hearing (and cer-

[6]The hearing referred to is the preliminary hearing which is a probable cause for detention hearing, not a probable cause for arrest. (See Arguments III-VII, *in/ra*).

tainly no probable cause for arrest hearing is ever held). (1 J.A. 27-63, 82-83.) If a person is arrested on Wednesday evening, he or she will not be *arraigned* until the following Monday, a period of over 100 hours. If the arrest should fall on a holiday weekend such as Thanksgiving, the detention period, prior to arraignment, would be seven days. (1 J.A. 27-63, 82-84, 2 J.A. 307-308, 315.)[7]

All of this only applies to arraignments. There are *no* times set for probable cause for arrest hearings. At the video-conducted arraignment hearing, prisoners are told that a person has a right to a hearing to determine whether there was probable cause for arrest. However, the prisoners must request the probable cause or bail hearing

[7]The chart accompanying Riverside County District Attorney Grover Trask's deposition reads as follows:

ARRESTED		MUST BE ARRAIGNED BY
SUNDAY:	Any time	5:00 P.M. Wednesday
MONDAY:	Before 5:00 P.M. (1700)	5:00 P.M. Wednesday
	5:01 P.M. (17:01) to Midnight (2400)	5:00 P.M. Thursday
TUESDAY:	Before 5:00 P.M.	5:00 P.M. Thursday
	5:01 P.M. to Midnight	5:00 P.M. Friday
WEDNESDAY:	Before 5:00 P.M.	5:00 P.M. Friday
	5:01 P.M. to Midnight	5:00 P.M. Monday
THURSDAY:	Before 5:00 P.M.	5:00 P.M. Monday
	5:01 P.M. to Midnight	5:00 P.M. Tuesday
FRIDAY:	Before 5:00 P.M.	5:00 P.M. Tuesday
	5:01 P.M. to Midnight	5:00 P.M. Wednesday
SATURDAY:	Any time	5:00 P.M. Wednesday

NOTE: If a legal holiday (a day when the courts are closed) occurs on the day of arrest, the day of arraignment, or on any day in between, the arraignment may be postponed one (1) additional day.

(1 J.A. 83-84, 2 J.A. 307-308.)

at the time of arraignment and it may be provided at some later unspecified date! (1 J.A.120-125.)

Thus, one *may* get a probable cause hearing on continued detention (as distinguished from probable cause for arrest), if one requests it, but it would then only be provided at the time of the preliminary hearing ten days after the arraignment and would be based on the entire investigative file.

The potential for the incarceration of innocent persons with no probable cause for arrest determination is substantial. A random survey indicated that of the total warrantless arrestee sample, *42% were released "no complaint" after four to six days in custody.* Of 16 warrantless arrestees eventually seen by a judge, 6% were seen by a judge in 3 days; 56% were seen by a judge in 4 days; 37% were seen by a judge in 5 days.[8] (1 J.A. 21-55.)

The County conducted its own survey. Of 46 warrantless felony arrestees who obtained release approximately 63.24% were held beyond 24 hours.[9] (2 J.A. 276-277.) Further, 16 of the 49 were released pursuant to Penal Code section 825, which means they spent at least 48 hours in jail and were released without receiving either a probable cause or arrest hearing or being arraigned. They were held solely based on the unreviewed officer's report. In computing these figures, the County did not count the 48 to 72 hours that would be added for either weekends or holidays. Once that is done, the County's survey is very similar to the plaintiffs' survey. The County admits that

[8]There is nothing in the record which would indicate that, on any of these occasions, a determination was made as to probable cause for arrest.

[9]This figure is reached by taking the number of warrantless felony arrestees (46) and dividing it by 29, the number of persons held over 24 hours.

"in nearly 90 percent of all cases in Riverside the procedures needed to complete arrest reports can be completed in 24 hours or less." Amicus Curiae Brief of Grover Trask, District Attorney, Riverside County, p. 16. The County desires a longer period in order to collect evidence on the remaining 10 percent, not because of any need to complete the administrative steps incident to arrest. *Id* at 16-17.

The District Court Judge, Richard Gadbois, had before him *Scott v. Gates*, Civ. No. 84-8647 (C.D.Cal., Oct. 3, 1988) on the identical issue. The ruling of Judge Gadbois in this case rested on his ruling in *Scott* together with the evidence in this record. (1 J.A. 22-23, 79-80, 117-119.) The procedure adopted by Orange County, in *Scott v. Gates*, includes a lawyer appointed as a judicial hearing officer to determine probable cause for arrest. (2 J.A. 161-162.) The hearings conducted by this judicial hearing officer are actually conducted at the county jail; one person was able to conduct 14,557 hearings within one year. (2 J.A. 168-169.) The review by this hearing officer resulted in a 9.1% release rate in 1988 because of lack of probable cause for arrest within less than 36 hours after the arrest. *Id.*

SUMMARY OF ARGUMENT

The judgment of the Ninth Circuit United States Court of Appeals should be affirmed by this Court for the following reasons:

A. Contrary to the County's Contentions, the Named Plaintiffs Had Standing to Prosecute this Action at the Time The Complaint Was Filed.

At the time the Second Amended Complaint was filed, the named Plaintiffs, arrested without a warrant, were each in custody pursuant to an official policy of Riverside County, and had not received a prompt judicial determination of probable cause for that arrest. Each of the named Plaintiffs was suffering injury from the ongoing violation of his right to a hearing relating to the constitutional right to liberty; the injury in question was one which was redressable by the court. The Article III requirement of a case or controversy was satisfied.

B. The Certified Class Had Standing At All Critical Stages.

Plaintiffs' action was certified as a class action, the class was comprised of all present and future detainees arrested without warrants who have been or may be denied prompt probable cause for arrest, bail or arraignment hearings. As in *Gerstein v. Pugh*, 420 U.S. 103, 110, n.11, 95 S.Ct. 854, 861, n.11 (1974), this is a continuing, inherently transitory class; the continuous existence of a class of persons suffering the deprivation of their constitutional rights is certain. Upon class certification, the class of unnamed persons described in the certification acquired a legal status separate from the interest asserted by the named Plaintiffs. *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553 (1975).

The duly certified class had standing to prosecute this action; that standing is not forfeited because of the probable mootness of the named plaintiffs' claims. *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 100 S.Ct. 1202 (1980); *Sosna, supra.*

C. The Duly Certified Class Meets All Prerequisites For Injunctive Relief.

The plaintiff class is suffering, and will suffer in the future, irreparable harm because of the loss of the opportunity for a prompt judicial determination of the lawfulness of the arrest and consequent deprivation of the class member's liberty. The loss of liberty occasioned by the

lack of a prompt hearing occurs under jail conditions which are also violative of the rights of the plaintiff class. Additionally, as noted in *Gerstein v. Pugh* 420 U.S. 103, 114, 95 S.Ct. 859, 863 (1975), the unlawful pretrial confinement imperils jobs, interrupts sources of income, and impairs family relationships. The class is a continuing one, comprising future warrantless arrestees, Riverside County officials have stated they intend to continue to enforce the challenged policy against members of the class in the future. *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660 (1983) does not bar the right to injunctive relief here, because of significant factual differences.

There is no realistic, complete or adequate legal relief other than injunction. A civil suit for damages, does not benefit the class as a whole. The only way in which future members of the class can be protected is by eliminating the challenged official policy. This can be accomplished only by injunction. To deny standing to seek injunctive relief here is to permit a governmental wrong to go unredressed, in violation of the basic principles of our government.

D. The Ninth Circuit was correct in ruling that Riverside County's Practices Concerning Probable Cause for Arrest Hearings is Unconstitutional Under *Gerstein v. Pugh*.

1. The defendants confuse the issue of probable cause for arrest with probable cause for detention for trial. The defendants go to great lengths citing California law concerning arraignment and preliminary hearings procedures; however, these procedures, applicable to the arraignment process, provide no prompt probable cause hearing for arrest as mandated by this Court in *Gerstein v. Pugh*. Rather, they set up a mechanism by which, for

misdemeanors, a probable cause hearing may be requested which will be held at some later date, and a procedure for felonies that results in a probable cause for detention hearing held at some later date as part of the preliminary hearing process. These procedures do not comply with *Gerstein v. Pugh* and are irrelevant, in fact and law, to that decision.

2. *Gerstein v. Pugh* requires that there be a post arrest hearing to determine probable cause for arrest. The standard to be applied for the post arrest determination is the same as that to be applied to determine whether a person has been arrested upon probable cause. Riverside County takes away the probable cause for arrest hearing and combines it with the probable cause for detention hearing because they seek to bring into that hearing post arrest investigations conducted by themselves and other agencies, in order to, as they admit, attempt to establish "probable cause for arrest". This is the policy which *Gerstein v. Pugh* found to be unlawful.

3. The procedures of the County of Riverside offend the Fourth Amendment and due process because there is no hearing actually provided to the individual prisoners. At the felony and misdemeanor videotape arraignment prisoners are simply informed by a pre-recorded videotape that they have a right to a hearing which will be held at some unspecified time and date in the future, if they request it. No person is even available from whom to request the hearing. The nature of a post-arrest determination as to probable cause for arrest is such that there must be a time and a place when such a determination is actually made because the prisoner is detained and presumed innocent. The result is, as the County admits, that virtually every prisoner fails to demand a hearing and, thereby, automatically waives the right supposedly guaranteed by the Fourth Amendment and *Gerstein v. Pugh*.

4. The arraignment process is not prompt. The County admits that in 90% of the circumstances the procedures incident to arrest can be completed in less than 24 hours. The County also admits that the only reason it desires more time is to engage in post-arrest investigation in order to bolster the probable cause for the original arrest. *Gerstein v. Pugh* ruled that there has to be a prompt probable cause hearing within a "brief period" in order to determine probable cause for arrest. The standard applied is to examine the time necessary to complete the "administrative" steps incident to arrest. The County has made absolutely no showing that it takes more than 36 hours, and in fact has admitted that it can be done in 24 hours. There is no basis for the delay of two to 17 days that presently occurs within the system.

ARGUMENT

I. THE COUNTY'S CONTENTION THAT THE JUDGMENT SHOULD BE DISMISSED BECAUSE OF LACK OF STANDING IS DEVOID OF MERIT.

A. At The Time The Second Amended Complaint Was Filed, The Named Plaintiffs Had Article III Standing To Prosecute The Within Action.

The County's position is essentially that no prisoner would ever have standing to seek injunctive relief on behalf of either himself or a class to halt certain types of improper police practices. It has massive ramifications to the rights of those who are innocent of the charges against them and are improperly arrested and detained without probable cause. In their papers defendants misconstrue the issue of standing as analyzed by this Court in *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 95 (1983). In order to properly analyze the issue of standing, it is necessary to review the various aspects of standing as it affects this case.

The "threshold requirement," *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 96 S.Ct. 1917 (1976), is summed up in the language of Article III of the United States Constitution as "a case or controversy." The gist of the question is,

> [W]hether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adversariness which sharpens the presentation of issues upon which the court is largely dependent for illumination of difficult constitutional questions.' [Citation omitted] ... When standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of *a particular issue* and not whether the issue itself is justiciable. (Emphasis added.) *Flast v. Cohen*, 392 U.S. 83, 96, 88 S.Ct. 1942 (1968).

In the case at bar, the allegations of the Second Amended Complaint (1 J.A. 2-7) show that plaintiffs, having been arrested without warrants, were in custody at the time of the filing of the Second Amended Complaint and are proper parties to request an adjudication of their right to a prompt determination of probable cause for their arrest. The complaint alleges that each of them suffered injury — the denial of a prompt probable cause for arrest determination and the resulting impact on their liberty (1 J.A. 3) — because of the putatively illegal policy of Riverside County. (1 J.A. 4-5.) Their injury is redressable in court because the court has the power to decide whether, at the time of the filing of the Second Amended Complaint, plaintiffs were being denied a probable cause for arrest hearing pursuant to the County's

policy, whether the County's policy is illegal and, if so, whether to enjoin Riverside County from continuing to enforce it. *Simon, supra.*

The allegations of the Second Amended Complaint satisfy the "threshold" Article III requirement of a case or controversy. The record below contains no evidence submitted by the County to contradict either the facts pleaded in the Second Amended Complaint concerning the incarceration of the named plaintiffs or the County's failure to obtain a prompt probable cause for arrest determination. The Riverside County policy which the named plaintiffs challenge is admitted and defended throughout this record. (1 J.A. 91; 105-106; Petitioner's Opening Brief (hereinafter "Pet. Opening Brief", Heading II).) See also Amicus Curiae Brief of Grover Trask, District Attorney, Riverside County.

Where, as here, sufficient facts have been pleaded to show standing, the party asserting lack of standing may not do so by means of a motion to dismiss for lack of standing. Instead, a motion for summary judgment should be brought, supported by evidence so that the district court can evaluate the standing claim based on evidentiary findings, not on pleading allegations. *Haase v. Sessions*, 835 F.2d 902, 904 (D.C. Cir. 1987) No such submission was made by the County. As they state in their Statement of the Case (Pet. Opening Brief, pp. 3-5), the County filed a motion to dismiss the First Amended Complaint; thereafter a Second Amended Complaint was filed, the County's motion to dismiss was taken off calendar and defendants answered. The County did not file a motion to dismiss either the complaint or the motion for summary judgment presenting any evidence that might defeat standing.

The County contends (Pet. Opening Brief, p. 10, 16) that the "constitutional violation asserted as the basis for the plaintiffs' equitable complaint was, as to the named plaintiffs, concluded at the time the complaint was filed" and therefore there was no continuing or future injury to be redressed by injunction.

Looking back from the vantage point of the injunction issued by the trial court on April 19, 1989 (2 J.A. 332-334), nine months after the Second Amended Complaint was filed, the County now contend that the 36-hour period constitutes the maximum time during which plaintiffs retained a constitutional right to a prompt determination of probable cause for their arrest.

The County argues that the constitutional violation alleged occurred and was finally concluded at the date and hour when the 36-hour time limit for a determination of probable cause for arrest later specified in the preliminary injunction expired. After that precise moment, it is asserted that there was no longer a constitutional violation to be redressed. (Pet. Opening Brief, p. 10.)

The Second Amended Complaint prayed only for a prompt probable cause determination (1 J.A. 7). At the time that Complaint was filed, there had been no determination of the maximum period within which the probable cause determination must occur. Before there could be any basis for asserting that the determination was required within 36 hours, the issue of the proper maximum period of time for such a determination had to be adjudicated.

The first time plaintiffs asked for a hearing within 36 hours after arrest was in their Motion for Preliminary Injunction, filed March 3, 1989. (1 J.A. 16.) The County cannot properly apply hindsight to assert that, after 36 hours in custody, plaintiffs had lost their constitutional

right to a probable cause determination within 36 hours after a warrantless arrest — a period which had not been adjudicated at the time the complaint was filed. The fact that more than 36 hours may have elapsed at the time the Second Amended Complaint was filed did not deprive plaintiffs of the right to a determination of a specific time limit for a hearing. The County, at a minimum, was required to effectuate that determination immediately in order to remedy to the maximum extent possible the wrong that had been committed. If plaintiffs, as they allege, have been unconstitutionally denied a prompt probable cause determination in connection with their warrantless arrests, each day, each hour in which they were detained without a determination of probable cause for their arrests, constitutes a violation of the fundamental constitutional right to a determination of such probable cause, and a hearing, however belated, would remedy that. Even if the 36-hour period has expired, the court can specify that a probable cause determination should be made within 36 hours after arrest without a warrant (which potentially will benefit both the individuals and the class). After the 36-hour period has lapsed, the court can still redress the subsequent continuing daily and hourly violations of plaintiffs' right to such determination.

The principle which the County would have this Court adopt would instruct that if there was a finding that a person in custody had been illegally arrested, he would be entitled to no relief because the alleged arrest had already been consummated. The County's own Brief negates that absurd position. Citing and quoting from *Warth v. Seldin*, 422 U.S. 490, 498-499, 95 S.Ct. 2197, 2205 (1975), it states:

> To determine whether a plaintiff has a "personal stake" in the lawsuit so as to confer standing under Article III, the "relevant inquiry is whether, assuming justiciability of the claim, the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision." (Pet. Opening Brief, pp. 14-15.) [The same language is quoted from the case of *Lewis v. Continental Bank Corp.*, ____ U.S. ____, 110 S.Ct. 1249, 1253 (1990). (Pet. Opening Brief, p. 21.) The County poses the issue as whether the "injunctive relief would remedy the injury which spawned the lawsuit." (Pet. Opening Brief, p. 17) It is self-evident that even a belated determination of plaintiffs' right to a probable cause determination would remedy, in part at least, the injury suffered by plaintiffs and certainly it would provide relief for the class members.

On the one hand the County argues that 36 hours having elapsed without the required determination, the individual plaintiffs lack the required motivation to rigorously prosecute the case because they can no longer get any benefit from the injunction. On the other hand, it argues that *res judicata* in a damage action by plaintiffs is a benefit that would give the plaintiffs the remedy that they are seeking. (Pet. Opening Brief, p. 28, n.9.) Since the County maintains that prisoners cannot enforce their right to a hearing through an injunctive action, it is hard to fathom what benefit attaches under their proffered analysis. Here, at the very least, the injunction would afford plaintiffs a *res judicata* holding that 36 hours is the time limit for a determination of probable cause for arrest. Thus, the County's position negates its argument regarding the alleged lack of motivation.

B. Plaintiffs' Action Was Certified As A Class Action; The Focus Of Inquiry Re Standing Shifts To The Standing Of The Class, Which Standing Is Clearly Established.

The class requested by plaintiffs is described in the Second Amended Complaint (1 J.A. 7) as "all present *and future* prisoners in the Riverside County Jail including those pre-trial detainees arrested without warrants held in the Riverside County Jail from August 1, 1987 to the present, and all such future detainees who *have been* or may be denied prompt probable cause, bail or arraignment hearings." (Emphasis added.)

Plaintiffs moved promptly, less than two months after the original complaint was filed, to obtain class certification. Hearings on this motion were repeatedly continued by the court. When the Second Amended Complaint was filed, the Motion was still pending and the only opposition to certification made by the County was an objection to the proposed subclass of pregnant women. (2 J.A. 338.) At no time after the Second Amended Complaint was filed did defendants otherwise object to the certification or to the standing of the named plaintiffs to represent the class. (2 J.A. 335-339.)

The class was certified on November 15, 1988. (2 J.A. 338.) At this point, five months before the injunction was granted on April 19, 1989 (2 J.A. 332-334), there had been no judicial determination of the period during which a probable cause determination must be made. The class comprises future warrantless arrestees, and it is accordingly a continuing class, suffering from a continuing policy that detains class members for more than 36 hours without the required probable cause determination. It is an inherently transitory class, but the constant existence of a class of persons suffering the deprivation of constitu-

tional rights is certain. *Gerstein v. Pugh,* 420 U.S. 103, 110, n.11, 95 S.Ct. 854, 861, n.11 (1975).

As in *Gerstein,* the record here does not show whether any of the named plaintiffs were still in custody when the district court certified the class. This Court discussed this problem in *Gerstein,* ibid:

> Such a showing ordinarily would be required to avoid mootness under *Sosna.* But this case is a suitable exception to that requirement. See *Sosna,* supra, 419 U.S. at 401, n.11, 95 S.Ct. at 559 n.11; cf. *Rivera v. Freeman,* 469 F.2d 1159, 1162-1163 (CA9 1972). The length of pretrial custody cannot be ascertained at the outset, and it may be ended at any time . . . *It is by no means certain* that any given individual, named as plaintiff, would be in pretrial custody *long enough for a district judge to certify the class.* Moreover, in this case the constant existence of a class of persons suffering the deprivation is certain. (Emphasis added.)

Upon class certification, the class of unnamed persons described in the certification acquired a legal status separate from the interest asserted by the named plaintiffs. *Sosna v. Iowa,* 419 U.S. 393, 95 S.Ct. 553 (1975). As in *Sosna,* even though the County here might not again deny the named plaintiffs a constitutionally prompt probable cause hearing, it is clear that it will enforce the present policy against those persons in the class that the named plaintiffs sought to represent and that the district court certified.

> In this sense the case before us is one in which [county] officials will undoubtedly continue to enforce the challenged [policy] and yet, because of the passage of time, no single challenger will remain subject to its restriction for the period necessary to

see such a lawsuit to its conclusion. *Sosna,* 419 U.S. at 400, 95 S.Ct. at 558.[10]

The issue here is standing of the named plaintiffs at the time the Second Amended Complaint was filed. It is clear that they did have standing at that time. The certified class which the named plaintiffs represent is an inherently transitory, continuing class; it has standing to bring this action.[11]

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[10]See also *Foster v. Center Township of LaPorte County,* 798 F.2d 237, 245 (7th Cir. 1986):

> . . . [I]f the claim is of such a transitory nature that the district court cannot reasonably be expected to rule on the motion for certification before the expiration of the named plaintiff's claim, the certification may be deemed to relate back to the filing of the original complaint." [Citing *Gerstein,* supra, n. 11] This position is fully supported by the 23 states which filed a joint Brief Amici Curiae in support of the Petition for Certiorari. At page 28 thereof they state that ". . . in this case, a class is named and certified, for the requirements of Article III standing, like statutory jurisdictional requirements, apply to each member of the class, just as if they were named members of the class.

See *Zahn v. International Paper Co.,* 414 U.S. 291, 94 S.Ct. 505 (1973); *Sosna v. Iowa,* 419 U.S. 393, 402 (1975).

[11]The County does not contend that the named plaintiffs' individual claims have become moot in the two years which have elapsed since class certification; it apparently concedes that the standing of the class is not forfeited because the named plaintiffs' claims may be moot. *Sosna,* supra. See also, *United States Parole Comm'n v. Geraghty,* 445 U.S. 388, 397-398, 100 S.Ct. 1202, 1209 (1980):

> Mootness of the named plaintiff's individual claim after a class has been duly certified does not render the action moot . . . . The Court [in *Sosna*] stated specifically that an Article III case or controversy "may exist between a named defendant and a member of the class represented by the named plaintiff, even though the claim of the named plaintiff has become moot.

It is of course correct, as the County contends (Pet. Opening Brief, pp. 15-16), that class certification standing alone "adds nothing to the question of standing . . . ." However, the case at bar differs significantly from the principal case on which the County relies, *Simon v. Eastern Ky. Welfare Rights Org.,* 426 U.S. 26, 40 n.20, 96 S.Ct. 1917, 1925 n.20, (1976). In *Simon,* the Court found that the injury the named plaintiff complained of could not be "fairly . . . traced to the challenged action of the defendant." 48 L.Ed.2d at 462. Here, the named plaintiffs suffered injury directly as the result of an official policy of the County.

In *Foster v. Center Tp. of LaPorte County,* 798 F.2d at p. 242, the purported class action was dismissed because Foster, the named plaintiff, was not a member of the class described. Her eligibility for relief was not threatened by the challenged eligibility guidelines. The named plaintiffs herein, however, were directly injured by the challenged County policy. In *Holmes v. Fisher,* 854 F.2d 229 (7th Cir 1988), Holmes was denied the right to represent a class in his challenge to unconstitutional detention without a probable cause determination on the ground that he had been arraigned before he filed the action and that accordingly the issue as to the validity of the arrest no longer existed when he filed his complaint. As the 7th Circuit commented,

> This case was dead on arrival, moot the day the complaint was filed. So far as equitable relief was concerned, there was never a case or controversy within the meaning of Article III of the constitution. *Geraghty* does not breathe life into a stillborn case. *Holmes,* 854 F.2d at 232.

In contrast, here the named plaintiffs were in custody and had not received a probable cause determination, nor had

they been arraigned; the issue of probable cause for the arrest was very much alive at the time the complaint was failed. The named plaintiffs were still suffering the wrong complained of — the same wrong suffered by the class they sought to represent.

C. The Duly Certified Class Meets All Prerequisites For Injunctive Relief.

In addition to Article III "case or controversy" standing, when plaintiffs seek *injunctive* relief, they must also meet the equitable prerequisites for such relief. The plaintiff class is suffering, and will suffer in the future, irreparable harm because of the loss of a fundamental constitutional right.[12] Continued detention in the absence of a prompt judicial determination of probable cause for the arrest, is a constitutional right on the same level as freedom of speech, freedom of association for purposes of union organizing, and due process. But there is more.

Plaintiffs have alleged that this unlawful detention takes place under conditions which are violative of other rights — prisoners are forced to sleep on the floor of "triple bunked" cells; denied adequate access to counsel and adequate visitation rights; and subject to excessive force by guards. (1 J.A. 5.) In addition, as this Court pointed out in *Gerstein v. Pugh,* 420 U.S. at 114, 95 S.Ct. at 863, "Pretrial confinement may imperil the suspect's job, interrupt his sources of income, and impair his family relationships."

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[12]*Cf. Elrod v. Burns,* 427 U.S. 347, 373, 96 S.Ct. 2673, 2690(1976) ["The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."]; *Allee v. Medrano,* 416 U.S. 802, 94 S.Ct. 2191 (1974) [Lawful effort to organize a lawful union crushed because of intimidation by police].

In their contention that plaintiffs lack standing to seek injunctive relief, the County relies principally on *City of Los Angeles v. Lyons,* 461 U.S. 95, 103 S.Ct. 1660 (1983) for the proposition that a plaintiff "could not seek injunctive relief absent the allegation that he would again be detained by police officers and be subjected to the alleged improper use of force." (Pet. Opening Brief, p. 18.) The County quotes from *Lyons:*

> Lyons' standing to seek the injunction requested-depended on whether he was likely to suffer future injury from the use of the chokeholds by police officers. Count V of the complaint alleged the traffic stop and choking incident five months before. That Lyons may have been illegally choked by the policeon October 6, 1976, while presumably affording Lyons standing to claim damages against the individual offieers and perhaps against the city, does nothing to establish a real and immediate threat that he would again be stopped for a traffic violation, or for any other offense, by an officer or officers who would illegally choke him into unconsciousness without any provocation or resistance on his part.

461 U.S. at 105, 103 S.Ct. at 1667.

The County's eliance on *Lyons* is misplaced; there are highly significant factual differences between *Lyons* and the case at bar which make the *Lyons* rule inapposite:

(a) In *Lyons,* the wrong alleged by the plaintiff had indeed been "concluded" before the complaint was filed; Lyons suffered the alleged illegal chokehold five months before filing his complaint. At that time there was no proof of a continuing illegal policy or practice in effect at that time. He may have had Article III standing for his "case or controversy" over damages, with respect to injunctive relief, as the court said in *Holmes v. Fisher,* 854

F.2d at 232, "the case was dead on arrival . . . a stillborn case."

In the case at bar, the plaintiffs were in custody, deprived of their constitutional right to a prompt determination of the legality of their arrest at the time the complaint was filed.

(b) Here, as distinguished from *Lyons,* there is no *bona fide* issue of mootness, once the class was certified. Although the plaintiff in *Lyons* sought to represent a class, the class had not been certified; Lyons's claim was handled as the claim of an individual. In this action the plaintiffs obtained certification of a class comprising all present and future warrantless arrestees. Any intervening mootness of the named plaintiffs' claims did not render the claims of the class moot. *United States Parole Comm'n v. Geraghty,* 445 U.S. 388, 404, 100 S.Ct. 1202, 1212 (1980).

(c) Plaintiff Lyons was unable credibly to allege the existence at any time of an official policy of the City authorizing the police conduct of which he complained:

> . . . [F]or Lyons to succeed in his damages action, it would be necessary to prove that what happened to him — that is, as alleged, he was choked without any provocation or legal excuse whatsoever — was pursuant to a city policy. [The City's] policy is described . . . as authorizing the use of chokeholds 'in situations where the officers are threatened by far less than deadly force.' This is not equivalent to the unbelievable assertion that the City either orders or authorizes application of the chokeholds where there is no resistance or other provocation. *Lyons,* 461 U.S. at 106, n.7, 103 S.Ct. at 1667, n.7.

On the other hand, not only do plaintiffs herein allege that they are unconstitutionally detained under an official

policy of the County of Riverside (1 J.A. 4-5), but the County in its Opening Brief continues to concede and defend the very policy involved in this case. (1 J.A. 24-29, 31, 33-36, 40-41, 42, 44-45, 47-53, 55, 57, 61-62, Pet. Opening Brief, Heading II.)

The existence of an official policy of the governmental unit involved is critical to the determination of whether or not there is a "reasonable likelihood" that the class will suffer future harm; *Lyons* is distinguished by its failure to "plausibly allege" that the City "authorized police officers to act in . . . [the] manner [complained of]." *Honig v. Doe,* 484 U.S. 305, 322, 108 S.Ct. 592, 603 (1988.) In *Weinstein v. Bradford,* 423 U.S. 147, 148, 96 S.Ct. 347, 348 (1975), the Court cited *Super Tire Engineering Co. v. McCorkle,* 416 U.S. 115, 94 S.Ct. 1694 (1974) for the proposition that "it was enough that the petitioner employer showed 'the existence of an immediate and definite governmental action or policy that has adversely affected and continues to affect the present interest' . . ."[13]

In the instant case, the "present interest" is the interest of the class of present and *future* warrantless arrestees, which is adversely affected by the "immediate and definite" policy of the County of Riverside. The circumstances of the plaintiff class establish that the threat of future harm is certain; the class has met this prerequisite for injunctive relief.

Further, there is no complete or adequate legal relief other than injunction. Here the loss relates to the constitutionality and legality of the failure to have a prompt

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[13] Similarly, in *O'Shea v. Littleton,* 414 U.S. 488, 94 S.Ct. 669 (1974), an injunctive relief action was not allowed because the Court assumed plaintiffs would not violate the law in the future. Here, plaintiffs have merely been arrested without a warrant. Their innocence of any violation of the law is presumed.

determination of probable cause for a warrantless arrest and the resulting deprivation of freedom. It belies the very substance of our system of government to assert that an action for damages is an adequate substitute for an injunction requiring such a prompt determination. This would be true even if the conditions of imprisonment were more like hotel living than the conditions described in the complaint.

To say that the individuals have a civil action for damages is to surrender to an illusion. The County's proposed remedy does not get them the hearing which will immediately alleviate the constitutional deprivation. Rather, it proposes that, based on the Orange County statistics, 9.1% of all the prisoners in the Riverside County jail should file civil rights actions in the federal district court to get damages. Setting aside the issue of whether most of these would be *in pro per* because of the lack of attorneys to file such cases, it is an absurd suggestion.

Even if the civil remedy of damages were realistic, it would be a remedy for the plaintiff *individually,* not for the plaintiff as a representative of the class or for the class as a whole. Plaintiffs have a right to protect the interests of a class. The unnamed members of the class, who are perhaps for one reason or another helpless to act on their own individually, have a right to be protected by the vigorous advocacy of their class representatives.

Injunctive relief is the *only* remedy which can assure the elimination of the unconstitutional policy. Without injunctive relief, while an action for damages was making its tortuous way through the clogged state or federal courts, the governmental agency would be able to continue its challenged policy. Even if damages were awarded to an individual, the governmental agency might

still not change its policy, deeming it better to pay the damages and keep a policy which it considers of benefit to the County. Without injunction, the County "would be free to return to [its] old ways." *Allee v. Medrano,* 416 U.S. 802, 811, 94 S.Ct. 2191, 2198 (1974)[14]

II. TO DENY STANDING TO SEEK INJUNCTIVE RELIEF HERE IS TO CREATE A WRONG FOR WHICH THERE IS NO ADEQUATE OR COMPLETE REMEDY AND TO PERMIT A GOVERNMENTAL WRONG TO GO UNREDRESSED; THIS VIOLATES THE BASIC PRINCIPLES OF OUR CONSTITUTION.

The basic principle of our democracy, as stated in the Declaration of Independence, is that government derives its just powers from the consent of the governed. Our written Constitution, and in particular its Bill of Rights, was adopted to provide a bulwark for the people against arbitrary and tyrannical acts of government. The court system was established to provide a means for the people to vindicate their rights against government encroachment; access to the courts is a *sine qua non* of freedom.

This Court has recognized this principle in *Sosna,* supra, 419 U.S. at 401, n.9, 95 S.Ct. at 558, n.9:

> A blanket rule under which a class action challenge to a short durational residency requirement would be

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[14] It has been suggested by the County (Pet. Opening Brief, p.25) that the named plaintiffs could have sought habeas corpus relief. This remedy also is incomplete and illusory. When a writ is issued, it usually affects only the individual plaintiff. It applies only to those persons "in custody." 28 U.S.C. §2254. By its very nature class habeas corpus may be granted for *present* detainees; it cannot be granted for unnamed, unknown, future warrantless arrestees not yet in custody. It does not eliminate the challenged policy, and therefore provides no relief for the *class* of future warrantless arrestees.

dismissed upon the intervening mootness of the named representative's dispute would permit a significant class of federal claims to remain unredressed for want of a spokesman who could retain a personal adversary position throughout the course of the litigation.

Here, without injunctive relief, the claims of the plaintiff class will remain unredressed. To deny standing to the class would mean that there was no remedy for the most "significant class of federal claims" — those involving a challenge to oppressive government policy and action. "Our law should not be that rigid." *Roe v. Wade,* 410 U.S. 113, 125, 93 S.Ct. 705, 713 (1973).

III. THE ISSUES IN THIS CASE DEAL WITH PROBABLE CAUSE FOR ARREST; THE COUNTY CONFUSES PROBABLE CAUSE FOR ARREST WITH PROBABLE CAUSE FOR DETENTION FOR TRIAL. THE LAW CONCERNING ARRAIGNMENTS RELIED UPON BY THE COUNTY IS IRRELEVANT TO THE TRUE ISSUES OF THIS CASE

The argument presented by the County that certain arraignment and preliminary hearing procedures are available under state law is simply irrelevant. In their opening brief (Pet. Opening Brief, Heading II, pp. 30, 39-44), the County relies on *In re Walters,* 15 Cal. 3d 738, 126 Cal. Rptr. 239, (1975) as settling the law in California with respect to the interpretation of *Gerstein v. Pugh,* 420 U.S. 103, 95 S.Ct. 854 (1975). This is a misstatement of *In re Walters. Walters* sought habeas corpus on the basis of the *Gerstein* decision. On appeal, the California Supreme Court applied *Gerstein* principles to an arraignment situation, and, unfortunately, failed to specify that it was not dealing with the issue of probable cause for arrest.

It is clear from even a cursory perusal of *Walters* that it does not deal with the issue of probable cause for arrest, the heart of *Gerstein* and of the case at bar. Rather, *Walters* deals with probable cause for detention for trial. The court held, "unless waived, a judicial determination of probable cause is required in every case where a defendant charged with a misdemeanor is detained awaiting trial." *In Re Walters,* 15 Cal. 3d at 747.[15]

When a defendant is arrested without a warrant, "the judge may make his determination [of probable cause] upon a sworn complaint which incorporates by reference other factual materials which, together with the complaint . . . may include a copy of a police or other report which forms the basis for the complaint and arrest." *Id.*, 15 Cal. 3d at 751, n.6. "If the relevant documentation does not support probable cause for continued detention, the court may receive testimonial evidence on the issue in the presence of e defendant and his attorney . . . [D]efendant . . . has no right to confront and cross-examine the witnesses who testify on the issue of probable cause to detain." *Id.*, 15 Cal. 3d at 752-753.

The inclusion in the probable cause hearing of post-arrest investigation materials, the post-arrest complaint, and "other reports" or "testimonial evidence" clearly does not relate to probable cause for arrest. None of these materials was available to the arresting officer at the time of arrest on which could be based the probable cause for arrest.

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[15] By this statement, the court made it quite clear it was addressing probable cause for detention. Since Penal Code Section 859b requires a preliminary hearing within ten days after the arraignment, the court found no need to approve a pretrial procedure allowing for a probable cause for continuing detention hearing for persons charged with felonies. *In re Walters,* 15 Cal. 3d at 752, n.8.

California Penal Code Section 991 enacted "in light of the California Supreme Court's decision in *In re Walters,*" (Pet. Opening Brief, p. 40), mirrors *Walters* in that it too deals with probable cause for detention for trial, *not* probable cause for arrest.

Section 991(a) applies to a person arrested without a warrant and "charged with a misdemeanor to which he has pleaded not guilty." This occurs at a subsequent stage of the proceedings, after a complaint has been issued and entails the inclusion of materials gathered *after* arrest, materials which were not available to the arresting officer at the time he formed his "reasonable suspicion" that there was cause for arrest. Further, Section 991(a) provides that the magistrate, on motion of counsel for the defendant or the defendant, "shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof." This is clearly the standard for determining probable cause to hold for trial.

Subparagraph (c) of Section 991 makes this point even more specific. It lists the materials which the magistrate shall consider in determining the existence of probable cause: "any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference thereto . . . or any other [reliable] documents . . . ."

Penal Code Section 991 does not prescribe a pretrial procedure to comply with *Gerstein.* Its provisions for probable cause for detention determinations are designed to cure the lack of such requirement in earlier statutes; compliance with Section 991 cannot be equated with compliance with the *Gerstein* mandate.

IV. THE PROCEDURES FOLLOWED BY RIVERSIDE COUNTY DO NOT PROVIDE FOR A PROBABLE CAUSE FOR ARREST HEARING AS REQUIRED BY THE FOURTH AMENDMENT

A. A Finding of Probable Cause for Arrest is Required by the Fourth Amendment, and is, in Effect, a Post-Arrest Determination that the Facts Known at the time of Arrest Were Sufficient to Support the Issuance of a Warrant.

In *Gerstein v. Pugh,* this Court held that an adult arrested without a warrant must be provided with a prompt post-arrest hearing to determine probable cause for arrest. The hearing is necessary in order to examine "the legal justification for arresting a person suspected of [a] crime," when there is no warrant. 420 U.S. at 113-114, 95 S.Ct. at 863. The hearing serves the purpose of a post-arrest warrant where the warrantless arrest is allegedly justified by the exigencies of the situation. Pursuant to such an arrest, the person may be held "for a brief period of detention to take the administrative steps incident to arrest" prior to receiving a probable cause hearing to determine whether, at the time of arrest, the officer had sufficient articulable information which would allow the warrantless arrest. *Id.* At the hearing the magistrate applies the same standard "as that for arrest." 420 U.S. at 113-114, 95 S.Ct. at 863. The standard is "probable cause to believe the suspect has committed a crime." *Id.* Such a hearing is necessary not only because of strict Fourth Amendment probable cause standards but also because "[p]retrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships." [citations omitted] 420 U.S. at 114, 95 S.Ct. at 863. Without mandating a specific procedure the court ruled that the probable cause for arrest determi-

nation must "be made by a judicial officer either before or *promptly* after the arrest." (Emphasis added.) 420 U.S. at 125, 95 S.Ct. at 869.

The key to understanding and resolving the controversy between County and plaintiffs lies in recognizing the difference between a post-arrest hearing to determine whether or not there was probable cause for arrest, and an arraignment hearing at which it is determined whether or not the person arrested shall be held for trial on specified charges. An arraignment is not, no matter how long or how soon after arrest it is held, the same as the prompt, post-arrest determination of probable cause for arrest which this Court ordered in *Gerstein v. Pugh*. An arraignment is simply the procedure whereby an arrested person is presented with written charges and called upon to plead to them. California has statutes governing the maximum amount of time during which an arrested person may be kept in confinement without being arraigned. These statutes serve an essential and admirable purpose. Prompt arraignment assures that persons arrested will not be held for prolonged periods of time without written charges being brought against them. This is a separate and distinct right from that which forbids arrest, except upon probable cause. As Judge Gadbois aptly remarked at the district court hearing, "there's a clear difference between the concept of arraignment, as expressed in the Penal Code, and the *Gerstein* process." (1 J.A. 11.)

In *Gerstein v. Pugh,* this Court set forth the basic principle that: "The Fourth Amendment *requires* a judicial determination of probable cause as a pre-requisite to extended restraint of liberty following arrest." (Emphasis added.) 420 U.S. at 114, 95 S.Ct. at 863.

The potential for harm to innocent parties is perhaps best exemplified by two facts. The first is contained within

the County's survey. Of the 46 felony arrestees released, 16 (34.8%) were released pursuant to Penal Code § 825, which means they were held for 48 hours or longer, without a probable cause for arrest hearing, without being charged and without being arraigned. (2 J.A. 266-267.) The second is the County's admitted policy of holding people without charging them and then releasing them "at about 5:00 p.m. on the last day for arraignment." (1 J.A. 82.) Thus, innocent people are held for up to seven days without ever having a probable cause for arrest hearing, without being charged and without being arraigned. This Court, in *Gerstein,* found a prosecutor's analysis of probable cause to be insufficient. 420 U.S. 119, 120, 95 S.Ct. at 865. The County proposes to replace the standard already rejected by this Court with an even less neutral process, i.e., the arresting officer makes the determination. This Court, to accept the County's analysis on the facts of this case would have to overturn *Gerstein v. Pugh.*

B. The County of Riverside Seeks to Eviscerate Fourth Amendment Protections by Allowing the Determination of Probable Cause at the Time of Arrest to Be Made Based Upon Documents and Information Obtained After the Arrest was Made As Well As By Using the Detention Period to Collect Evidence.

In *Gerstein v. Pugh,* this Court, citing to *Mallory v. United States,* 354 U.S. 449, 456, 77 S.Ct. 1356, 1360 (1957) stated:

> Presumably, whomever the police arrest they must arrest on "probable cause." It is not the function of the police to arrest, as it were, at large and to use an interrogating process at police headquarters in order to determine whom they should charge before a

committing magistrate on "probable cause." 420 U.S. at 120 n.21, 95 S.Ct. at 866, n.21.

The County admits that, after arrest and prior to arraignment, the investigating agencies collect significant investigative material, maintaining that:

> In approximately ten percent of the cases, complications may be added which will act to slow the procedures described in the factual background portion of this brief. (Footnote omitted.) For example, at a crime scene, where there has been a homicide for instance, a number of agencies in addition to the police or sheriff may respond and be required to gather evidence and file reports. The coroner will respond to examine the body before it is moved; the Criminalistics Branch of the California Department of Justice may respond to gather evidence and take samples; the F.B.I. may appear if the crime is somehow believed to have an interstate character. (Amicus Curiae Brief of Grover Trask, District Attorney, County of Riverside, pp. 16-17.)

The County of Riverside specifically notes that "all of these agencies must file reports, and when they respond to a scene after a crime has been committed, *their reports may be important in deciding if a person was properly arrested at the scene upon probable cause.*" (Emphasis added.) *Id.* at 17.[16] This position stands on its head the concept of determining probable cause "at the time of arrest." It seeks to delay the probable cause hearings in order to collect evidence subsequent to the arrest so as to

[16]Riverside County's approach has been determined to be as unlawful under state law as it is in the federal context. In *People v. Powell*, 67 Cal. 2d 32, 60, 59 Cal. Rptr. 817 (1967), the Court stated that one of: "the principal purposes of the requirement(s) of prompt arraignment [is] to prevent secret police interrogation . . . ".

justify the original arrest for which the arresting officer may not have had probable cause. This is exactly the situation which *Gerstein* intended to prevent. The Constitution does not allow a person to be detained in order for evidence to be collected to justify a prior arrest.

The *Gerstein* Court explained that "a policeman's on-the scene assessment of probable cause provides legal justification for arresting a person suspected of crime and for a brief period of detention to take the administrative steps incident to arrest. Once the suspect is in custody, however, the reasons that justify dispensing with the magistrate's neutral judgment evaporate." 420 U.S. at 113-114, 95 S.Ct. at 863.

In *Llaguno v. Mingey,* 763 F.2d 1560, 1568 (7th Cir. 1984) Judge Posner analyzed the *Gerstein* requirements which allow some interval for booking the arrested person and completing other paperwork prior to presentation to a neutral magistrate. In ruling that this interval could not be used as mechanism for collecting evidence to justify an otherwise unlawful arrest, he stated:

> The only reason for delay in bringing [the defendant] before a magistrate was that the police hoped to build a case against David while he was in jail, and this is not a permissible reason for jailing someone indefinitely. It would inject an element alien to our system — imprisonment on suspicion, while the police look for evidence to confirm their suspicion. Of course the delay here was not indefinite, but it was almost two days; and with no better reason offered than the police were still investigating David's possi-

ble involvement in the crimes of his brother, it was too long.[17]

The County's policy is specifically intended to delay any hearings in order to collect evidence because, as noted above, "their reports may be important in deciding if a person was properly arrested at the scene upon probable cause." This is as unlawful under state law as it is under federal law. To accept the County's position would result in overturning bed rock constitutional principles. This Court should find the County's practice to be unconstitutional.

V. THE FAILURE TO ACTUALLY PROVIDE A PROMPT PROBABLE CAUSE FOR ARREST HEARING VIOLATES BOTH FOURTH AND FOURTEENTH AMENDMENT PRINCIPLES.

The procedure followed by the County is unconstitutional because no probable cause for arrest hearing is ever actually provided; none is even considered until after arraignment and then only if requested. Such a procedure offends basic due process concepts. "Whether any procedural protections are due depends on the extent to which

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[17]The need for a prompt probable cause for arrest hearing is also illustrated by the ruling in *McNabb v. United States*, 318 U.S. 332, 343-344, 63 S.Ct. 608, 614 (1943) where the court found that,

> Legislation, [5 U.S.C.A. § 300a; 18 U.S.C.A. §§ 593, 595], requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard — not only in assuring protection for the innocent but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society. For this procedural requirement checks resort to those reprehensible practices known as the "third degree" which, though universally rejected as indefensible, still find their way into use. It aims to avoid all the evil implications of secret interrogation of persons accused of crime.

an individual will be 'condemned to suffer grievous loss.' " *Morrissey v. Brewer,* 408 U.S. 471, 481, 92 S.Ct. 2593, 2600 (1972). "The question is not merely the 'weight' of the individual's interest but whether the nature of the interest is one within the contemplation of the 'liberty or property' language of the Fourteenth Amendment." *Morrissey,* 408 U.S. at 481, 92 S.Ct. at 2600, citing *Fuentes v. Shevin,* 407 U.S. 67, 92 S.Ct. 1983 (1972).

As noted by Circuit Judge Goldberg in his concurrence in *United States v. Garza,* 754 F.2d 1202, 1211 (5th Cir. 1985), "[a]lthough . . . [n]either a warrantless arrest, by itself, nor failure to bring a detainee before a magistrate, by itself, deprives a detainee of his constitutional rights, the commission of both offenses implicates the fourth and fourteenth amendments."

The nature of the right involved in this case is the liberty interest safeguarded by the Fourth Amendment. Depriving someone of liberty inflicts a "grievous loss" on that person and "its termination calls for some orderly process, however informal." *Morrissey,* 408 U.S. at 482, 92 S.Ct. at 2601. The Court in *Morrissey* held that in revoking parole, due process would require that some minimal inquiry be conducted and that this inquiry should be seen as in the nature of a 'preliminary hearing' to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions. 408 U.S. at 485, 92 S.Ct. at 2602. Due process requirements must be determined by considering "the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." *Morrissey,* 408 U.S. at 494, 92 S.Ct. at 2607.

In the *Morrissey* context, this Court held that "the parolee should be given notice that the hearing will take

place and that its purpose is to determine whether there is probable cause to believe he has committed a parole violation." 408 U.S. at 487, 92 S.Ct. at 2603. The analysis applies directly to the instant action. Upon arrest, a hearing should be promptly held to determine whether there was probable cause for arrest.

The procedure followed by Riverside County cannot pass constitutional muster. The burden cannot be placed upon the prisoner to request a hearing at a time when he or she is incarcerated, potentially without counsel, by responding to a video tape which takes less than three minutes to read and which has *one sentence* (which is vague as to what will be done if the request is made and even when it will be done) and does not even have a live person of whom to make a request. Further, at best, the present system's provision of a probable cause hearing is illusory. It is not surprising, therefore, that the County admits that "[v]irtually every prisoner . . ." fails to demand a hearing. (Amicus Curiae Brief of Grover Trask, District Attorney, Riverside County, p. 8.) The County maintains that the arraignment and preliminary hearing process somehow merge with the prompt probable cause for arrest hearing mandated by *Gerstein v. Pugh*. The effect of this merger is to eliminate completely the probable cause for arrest hearing and replace it with nothing. The Riverside County procedure offends Due Process and the Fourth Amendment.

VI. CALIFORNIA'S ARRAIGNMENT PROCESS DOES NOT ADDRESS THE PROMPTNESS COMPONENT OF PROBABLE CAUSE HEARING FOR A WARRANTLESS ARRESTEE CONSISTENT WITH THE REQUIREMENTS OF *GERSTEIN V. PUGH*

A. The State Arraignment Procedures Only Define the Outer Limits of Time for Arraignment. They Do Not Address the Time Period for the Probable Cause for Arrest Hearing.

The facts of this case are undisputed. An arraignment under Riverside County's procedures will take place from 2-7 days after arrest. No evidence was presented that showed any necessity for such a lengthy period of detention. In fact, the County admits that in "nearly 90 percent of all cases in Riverside the procedures needed to complete arrest reports can be completed in 24 hours." The only reason for extending the time period is to collect more evidence on the remaining 10 percent. (Amicus Curiae Brief of Grover Trask, District Attorney, County of Riverside, pp. 16-17). Riverside County argues that its policy complies with *Gerstein v. Pugh* because the *Gerstein* hearing merges with the California arraignment process for misdemeanors and felonies, and a separate, prompt proximate cause for arrest hearing can therefore be eliminated. Such argument is almost a *non sequitur* to the Fourth Amendment attack on these policies. The California Constitution and Penal Code do allow for some form of probable cause hearing which occurs subsequent to the arraignment process. However, there is no requirement, as the County implies, that under California law the probable cause *for arrest* hearing *must* await the arraign-

ment. In fact, the opposite is true. In *Dragña v. White*, 45 Cal. 2d 469, 473 (1955) the court stated:

> The statute [P.C. 825] . . . does not authorize a two-day detention in all cases but, instead, places a limit upon what may be considered a necessary delay, and a detention of less than two days, if unreasonable under the circumstances, is in violation of the statute . . . . The duty to bring the prisoner before a magistrate without delay is even more imperative where, as here, the arrest is made without a warrant. (Citations omitted.)

For *Gerstein's* requirement of "promptness" to be met the probable cause for arrest hearing must occur prior to arraignment particularly if Riverside County's arraignment procedure is followed. This can easily be done within the context of the present California statutory scheme.[18]

Even a quick analysis of the applicable California law highlights the errors in the County's argument. Article I of the California Constitution delineates, *inter alia*, certain right of persons arrested for crimes. Section 15 requires that a person in police custody be promptly brought before a magistrate and formally charged. Section 14 requires that "[a] person charged with a felony by complaint . . . be taken without unnecessary delay before a magistrate." These rights are implemented in Penal Code Sections 825, 849, 859b, and 991. Section 849 reiterates Article 1, Section 14, in that all arrestees are to be brought before a magistrate without unnecessary delay. Section 825 establishes that an *arraignment* must occur within 2 days of the arrest, excluding Sundays and holidays. Section 991 applies only to misdemeanors and requires that a probable cause for arrest hearing occur at the arraignment "if the defendant is in custody"; however, it does not require that the probable cause hearing occur only at the first arraignment. Section 859b requires that a felony arrestee be brought before a magistrate at the arraignment; however, it does not address whether probable cause for the arrest is to be determined at the arraignment. In fact, the county admits that, for felonies, no probable cause hearing of any kind will be held until up to ten (10) days after the arraignment at the preliminary hearing. (2 J.A. 299.) Obviously, a preliminary hearing at which evidence as to much more than the arrest is presented does not contemplate the *Gerstein* probable cause for arrest hearing.

Even if Riverside's policy does comply with the California arraignment procedure for both felonies and misdemeanors, neither the promptness nor the probable cause for arrest requirements of *Gerstein v. Pugh* are met. Whether Riverside County complies with state law concerning arraignments is irrelevant to a determination of promptness under *Gerstein*.

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[18]Judge Gadbois in conjunction with ruling that the California arraignment process is different from the *Gerstein* process (1 J.A. 11), was quite specific that he was not going to make any rulings on the California Constitution. He stated at the preliminary injunction hearing: "My only problem with your papers is that if you think I'm going to go roaming through the Penal Code of the State of California declaring everything in there unconstitutional, you're sorely mistaken." (1 J.A. 10.) He immediately reiterated that position: "The arraignment process does not. It clearly does not comport with *Gerstein*. I'll be happy to say that, if you give me some language to that effect. But don't tell me to declare the Penal Code of California unconstitutional. That's just a little much." (1 J.A. 11.)

B. Even if the Type of Hearing Provided for Related to Probable Cause for Arrest, the Detention Time Established by Riverside County's Procedure Would Be Violative of the Fourth Amendment Promptness Standard.

Assuming, *arguendo,* that Riverside County's policy and procedure culminate in a probable cause for arrest hearing, the delay for the hearing that is ultimately held violates the principle of promptness that is constitutionally required. The California cases that deal with "unnecessary delay" construe Penal Code § 825 as it is applied to arraignments. *Youngblood v. Gates* 200 Cal. App. 3d 1302, 246 Cal. Rptr. 775 (1988); *People v. Chambers* 276 Cal. App. 2d 89, 103, 80 Cal. Rptr. 672 (1969). The time allowed by that Penal Code section for arraignment is two days or less after the arrest regardless of whether the arrest is made with a warrant or is warrantless. *Dragna v. White*, 45 Cal. 2d at 473.

In *Youngblood*, the court not only addressed the concept of promptness for arraignment, but it also decided the definition of "two days" provided for in Penal Code § 825 as well as the proper prearraignment treatment of arrestees. The court ruled that the legislative intent behind § 825 is that the "two day" arraignment requirement refers to "days" not "hours". "A defendant arrested at any time on Monday must be arraigned by Wednesday." *Id.* at 1313. Thus, the Riverside policy of a "48 hour" detention period prior to the arraignment is in direct conflict with the legislative intent with respect to that section.[19]

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[19]Although the evidence before the trial court was that the 48 hour analysis of *People v. Chambers* was used in Riverside County, the County now contends that it applies the "two court day" requirement of *Youngblood.* (Pet. Opening Brief, pp. 41-43, n. 12-13.)

Moreover the *Youngblood* court, consistent with *Dragna,* held that an unnecessary delay can occur prior to the maximum allowed two day delay for arraignment permitted by Penal Code Section 825 stating that the time period "[s]et forth in Penal Code Section 825 is not a limitation on 'necessary' delay. Thus, no unnecessary delay is permissible between the time of arrest and presentation to a Magistrate, *even if that presentation takes place within two days."* (Emphasis added.) *Id.* at 319.

Because a probable cause for arrest hearing is a substitute for a warrant ordinarily required by the Fourth Amendment to be issued prior to arrest, the urgency of a probable cause for arrest hearing is even greater than that for an arraignment. An arraignment is held only after the issuance of a complaint; such issuance is not one of the administrative requirements related to the arrest and, accordingly, the time required to obtain the complaint constitutes unnecessary delay with respect to the determination of probable cause for the arrest.

If, as California authority holds, two days is a maximum period permitted for the arraignment to take place and a shorter period may be required, it follows that the less complicated and more urgent requirements for a determination of probable cause for arrest may properly be found to be less than either the *Youngblood* two days or the *Chambers* 48 hours standard.

Amici Hawaii, *et al.*, makes the assertion that "... it is the majority view that the 'administrative steps' the police are permitted to complete prior to presentment include such matters as 'completing paperwork, searching the suspect, inventorying property, fingerprinting, photographing, checking for prior record, laboratory testing, interrogating the suspect, verifying alibis, ascertaining similarities to

other crimes, and conducting lineups.' " Brief of Amicus Curiae Hawaii, *et al.*, at p. 15. Such assertion is directly contrary to both the Fourth Amendment and *Gerstein v. Pugh*. In *Gerstein* this court noted that "[A] policeman's on-the-scene assessment of probable cause provides legal justification for asserting a person suspected of a crime, and for a brief period of detention to take the administrative steps incident to arrest." 420 U.S. at 113-114, 95 S.Ct. at 863. Those steps "incident to arrest" do not include an unlawful detention in order to garner evidence with which to retroactively create probable cause for arrest. 420 U.S. at 120 n.21, 95 S.Ct. at 866 n.21.

Applying the promptness standard of *Gerstein*, a number of federal courts have analyzed the particular time periods necessary to complete the "administrative steps" incident to arrest.[20] The wisdom of these cases becomes manifest in their analysis. The cases are fact specific.

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[20]These cases reach different results depending upon the exigencies of the local police departments. See, *e.g.*, *Moore v. Marketplace Restaurant*, 754 F.2d 1336 (7th Cir. 1985) (brief period of detention to take administrative steps "can be 4 hours if local facts justify it"); *Fisher v. Washington Metro Area Transit*, 690 F.2d 1133 (4th Cir. 1982) (24 hours sufficient to complete steps); *Sanders v. City of Houston*, 543 F. Supp. 694 (S.D.Tx. 1982) (24 hours); *Dommer v. Hatcher*, 427 F. Supp. 1040 (N.D. Ind. 1977) (24 hours); *Lively v. Cullinane*, 451 F. Supp. 999 (D.D.C. 1976) (2½ hours); *Mabry v. County of Kalamazoo*, 626 F. Supp. 912 (W.D.Mich. 1986) (60 hours unconstitutional); *Pallon v. Przybylski*, 822 F.2d 697 (7th Cir. 1987) (14 hours unconstitutional); *McGaughey v. City of Chicago*, 664 F. Supp. 1131 (N.D.Ill. 1987) (23 hours considered unconstitutional); *Llaguno v. Mingey*, 763 F.2d 1560 (7th Cir. 1985) (42 hours found unconstitutional); *Austin v. City of Grand Rapids*, 685 F. Supp. 1396 (W.D.Mich. 1988) (89 hours found unconstitutional); *Bernard v. City of Palo Alto*, 699 F.2d 1023, 1025 (9th Cir. 1983), (24 hours represent outer limits of constitutionality); *Kanekoa v. City and County of Honolulu* 879 F.2d 607 (9th Cir. 1989), (11½ hours might be unconstitutional).

What constitutes promptness in one area under a particular set of circumstances may well be delay in another. Rather than setting one overreaching standard that is completely unrelated to the local exigencies, *Gerstein* and its progeny look to exactly what time is needed by the local law enforcement agency to complete the administrative steps. *Gerstein* allows local agencies the unique opportunity to fashion their own destinies. Judge Gadbois recognized this when he refused to set a time period for the Riverside County branch jails. Riverside County is primarily rural. Rather than setting one standard for all parts within the county he entered an order requesting the "implementation of satisfactory procedures in this Riverside County branch jail as soon as practicable." (2 J.A. 332-333.)[21]

The County has not offered a single stitch of evidence showing why the "administrative steps" necessarily mandate a period of more than 36 hours. In fact all of the evidence, including the County's admission before this Court in its "Amicus" Brief, proves otherwise. The evidence that the County did submit showed quite graphically the benefits that result from proper probable cause for detention hearing. The declaration of Larry Smith (2 J.A. 181-185) is very helpful in explaining the benefits conferred upon the process by having prompt probable cause for detention hearings. In it, he reviews the court ordered procedures set up in Orange County as a result of Judge Gadbois' decision in *Scott v. Gates*, Civ. No. 84-8647 (C.D.Cal., Oct. 3, 1988). (1 J.A. 23.) In *Scott v. Gates*, Judge Gadbois issued an order virtually identical to that

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[21]The record is quite replete with information that the County could comply with the 36-hour time requirements. In fact, the district attorney for Riverside County admits that the system could be implemented. (2 J.A. 303, 304.)

in the instant action. (1 J.A. 22-23.) The totals for Orange County (2 J.A. 168-169) indicate that for 1987, 8.5% of the warrantless arrestees were released after a prompt probable cause hearing. That figure increased to 9.1% in 1988. (2 J.A. 168-169.) This is a significant number of releases considering that in 1988, 14,557 prisoners received probable cause for arrest hearings.[22]

The County also argues that the Riverside policy is constitutional because some of the warrantless arrestees are sometimes released within 24 hours (which, using their computation, does not include weekends or holidays (1 J.A. 81-83)). This argument is particularly specious, since so many are detained for significantly longer periods.

The declaration of the jail administrator again proves instructive on this issue. Of the 30 felony arrestee for whom "time" was computed, using the County's theory of not counting weekends as "time", the County's own survey for felony arrestees showed that 13 were kept over 24 hours (which could actually be over 72 hours); 11 over 36 hours (which could really be over 84 hours and 9 were over 48 hours (which could really be over 96 hours). (1 J.A. 80.) The County attempts to justify this without showing any administrative need for such lengthy periods of time.

In light of *Gerstein* and its progeny, Riverside's pretrial detention policy deprives plaintiffs of their Fourth Amendment right to a prompt hearing on probable cause for arrest.

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[22]These releases become even more important for prisoners of the Riverside County jail where on any given day over 234 prisoners out of 650 will not even have a bed to sleep in. (2 J.A. 318.) When they actually do get a bed the prisoners are *triple* bunked. (2 J.A. 319.)

VII. THE RIVERSIDE COUNTY PROCEDURES ARE COMPLETELY DIFFERENT FROM THOSE USED BY THE NEW YORK JUVENILE COURTS. THE PROTECTIONS PROVIDED BY THE NEW YORK PROCESS DO NOT EXIST IN RIVERSIDE COUNTY, *SCHALL V. MARTIN* THEREFORE IS INAPPROPRIATE.

The facts of this case are clear: a prisoner does not have counsel at the time he or she is informed by videotape of the right to some totally undefined hearing. For misdemeanants counsel is appointed at the next in court hearing. For felonies counsel arrives after the videotape is concluded. If the prisoners avail themselves of this attorney (with whom they have had a two or three minute relationship) the best the prisoner can expect is to have a probable cause hearing at the preliminary hearing ten days later. The prisoner has neither the benefit of counsel nor even a live person to respond to at the time he or she is informed of this vague, unclear, right. The prisoners are told of their rights while collected together in a noisy jail. They receive one sentence of information as to a substantial right, which is, as discussed previously, only a right to have a probable cause for detention hearing. The right is automatically waived by a failure to affirmatively request a hearing from a videotape. The present process in the Riverside County Jail provides no true benefits. It pales in comparison to the procedure used in Orange County. In Orange County, the prisoners get a prompt probable cause for arrest evaluation. This results in 9.1% of prisoners being released. In Riverside "[v]irtually every defendant waives this right." (Brief of Amicus Curiae Grover Trask, District Attorney, Riverside County, p. 8.)

The County claims that because the arraignment process is used as the touchstone for calculating timeliness

then somehow its procedures comply with the standards of *Schall v. Martin,* 467 U.S. 253, 104 S.Ct. 2403 (1984). The decision in *Schall* is simply not comparable. In *Schall,* there were substantial rights provided to the juveniles that do not exist in Riverside County. The New York statute was aimed at creating constitutionally permissible preventive detention for juveniles. 467 U.S. at 264, 104 S.Ct. at 2409. Under the New York procedure "notice, a hearing, and a statement of facts and reasons are given prior to any detention . . . ." *Id.,* 467 U.S. at 277, 104 S.Ct. at 2416. While the initial appearance before the magistrate prior to detention is informal, there is full notice of all charges and a complete stenographic record is kept. *Id.* The juvenile is accompanied by a parent or guardian; if a parent or guardian is not present the court must appoint a law guardian. *Id.* The juvenile is informed fully of his or her rights. The juvenile has counsel and receives written notice of the charges. Live testimony is taken. "Opposing counsel, the juvenile's parents, and the juvenile himself may all speak on his behalf and challenge any information or recommendation." 467 U.S. at 276, 104 S.Ct. at 2416. If detention is ordered, then, within three days, there must be "a formal, adversarial probable cause hearing" with the full panoply of trial rights including testimony under oath and cross-examination. 467 U.S. at 277, 104 S.Ct. at 2416. At the conclusion of this hearing, probable cause for detention must be ruled upon again in order to continue detention. As the Court in *Schall* noted: "[T]he FCA provides far more predetention protection for juveniles than we found to be constitutionally required for a probable-cause determination for adults in *Gerstein.*" 167 U.S. at 275, 104 S.Ct. at 2415.

When the procedure utilized by Riverside County is compared to that of New York, there is not a scintilla of similarity. None of the *Schall* protections exist for prison-

ers in the Riverside County jail. The County's reliance upon *Schall* is specious and unfounded in both fact and law.[23]

The record is quite clear that the Riverside County arraignment process provides no benefit. Further, such a process is not necessary for the "prompt" determination of probable cause as required by *Gerstein.* Riverside County's policies are unconstitutional.

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[23]The County also relies on *Williams v. Ward,* 845 F.2d 374 (2d Cir. 1988). Under the *Williams* facts warrantless arrestees are detained as long as 72 hours before they are provided with a probable cause hearing. The County argues that the Riverside detention policies comply with *Gerstein* as their policies follow that of *Williams.* There are a number of factual differences included in the *Williams* case which distinguish it from Riverside County. The record before the trial court in *Williams* was that only a small number of cases were rejected (13 out of 1407) as a result of lacking probable cause for arrest. 845 F.2d at 389 n.19. The trial court here had no evidence before it as to hearings in Riverside County, however it did have the Orange County experience, where the statistics ranged from 25% (1 J.A. 79-80) to 9.1% (2 J.A. 168) for release after prompt probable cause for arrest hearings. Further, in Riverside, felony warrantless arrestees can be detained as long as 17 days, which does not comply with *Williams* much less *Gerstein.* In addition the excessive detention time of *Williams* is factually unique to New York. In the lower court, respondents provided no evidence which showed that more than 24-36 hours are needed to complete the "administrative steps."

CONCLUSION

The underlying Circuit Court decision was correct. The plaintiffs had standing to sue. The County have violated, for a whole host of reasons, the standards set by this Court in *Gerstein v. Pugh*. This Court should uphold the rationale set forth in the lower Court.

Date: December 19, 1990

Respectfully Submitted,

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APPENDIX

California Penal Code

§ 825. The defendant must in all cases be taken before the magistrate without unnecessary delay, and, in any event, within two days after his arrest, excluding Sundays and holidays; provided, however, that when the two days prescribed herein expire at a time when the court in which the magistrate is sitting is not in session, such time shall be extended to include the duration of the next regular court session on the judicial day immediately following.

After such arrest, any attorney at law entitled to practice in the courts of record of California, may, at the request of the prisoner or any relative of such prisoner, visit the person so arrested. Any officer having charge of the prisoner so arrested who willfully refuses or neglects to allow such attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow any attorney to visit the prisoner when proper application is made therefore, shall forfeit and pay to the party aggrieved the sum of five hundred dollars ($500), to be recovered by action in any court of competent jurisdiction.

California Penal Code

§ 849. (a) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before such magistrate.

(b) Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever:

(1) He or she is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.

(2) The person arrested was arrested for intoxication only, and no further proceedings are desirable.

(3) The person was arrested only for being under the influence of a controlled substance or drug and such person is delivered to a facility or hospital for treatment and no further proceedings are desirable.

(c) Any record of arrest of a person released pursuant to paragraphs (1) and (3) of subdivision (b) shall include a record of release. Thereafter, such arrest shall not be deemed an arrest, but a detention only.

California Penal Code

§ 859. When the defendant is charged with the commission of a public offense over which the superior court has original jurisdiction, by a written complaint subscribed under oath and on file in a court within the county in which the public offense is triable, he or she shall, without unnecessary delay, be taken before a magistrate of the court in which the complaint is on file. The magistrate shall immediately deliver to the defendant a copy of the complaint, inform the defendant that he or she has the right to have the assistance of counsel, ask the defendant if he or she desires the assistance of counsel, and allow the defendant reasonable time to send for counsel. However, in a capital case, the court shall inform the defendant that the defendant must be represented in court by counsel at all stages of the preliminary and trial proceed-

ings and that representation will be at the defendant's expense if the defendant is able to employ counsel or at public expense if he or she is unable to employ counsel, inquire of him or her whether he or she is able to employ counsel and, if so, whether the defendant desires to employ counsel of the defendant's choice or to have counsel assigned for him or her, and allow the defendant a reasonable time to send for his or her chosen or assigned counsel. The magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the judicial district in which the court is situated. The officer shall, without delay and without a fee, perform that duty. If the defendant desires and is unable to employ counsel, the court shall assign counsel to defend him or her; in a capital case, if the defendant is able to employ counsel and either refuses to employ counsel or appears without counsel after having had a reasonable time to employ counsel, the court shall assign counsel to defend him or her. If it appears that the defendant may be a minor, the magistrate shall ascertain whether that is the case, and if the magistrate concludes that it is probable that the defendant is a minor, he or she shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor. The prosecuting attorney shall deliver to, or make accessible for inspection and copying by, the defendant or counsel, copies of the police, arrest, and crime reports, upon the first court appearance of counsel, or upon a determination by a magistrate that the defendant can represent himself or herself. If unavailable to the prosecuting attorney at the time of that appearance or determination, the reports shall be delivered within two calendar days. Portions of those reports containing privileged information need not be disclosed if the defendant

or counsel has been notified that privileged information has not been disclosed. If the charges against the defendant are dismissed prior to the time the above-mentioned documents are delivered or made accessible, the prosecuting attorney need not deliver or make accessible those documents unless otherwise so compelled by law. The court shall not dismiss a case because of the failure of the prosecuting attorney to immediately deliver copies of the reports or to make them accessible for inspection and copying.

California Penal Code

§ 859b. At the time the defendant appears before the magistrate for arraignment, if the public offense is a felony to which the defendant has not pleaded guilty in accordance with Section 859a, the magistrate, immediately upon the appearance of counsel, or if none appears, after waiting a reasonable time therefor as provided in Section 859, shall set a time for the examination of the case and shall allow not less than two days, excluding Sundays and holidays, for the district attorney and the defendant to prepare for the examination. The magistrate shall also issue subpoenas, duly subscribed, for witnesses within the state, required either by the prosecution or the defense.

Both the defendant and the people have the right to a preliminary examination at the earliest possible time, and unless both waive that right or good cause for a continuance is found as provided for in Section 1050, the preliminary examination shall be held within 10 court days of the date the defendant is arraigned or pleads, whichever occurs later.

Whenever the defendant is in custody, the magistrate shall dismiss the complaint if the preliminary examination is set or continued beyond 10 court days from the time of the arraignment or plea and the defendant has remained in custody for 10 or more court days solely on that complaint, unless either of the following occur:

(a) The defendant personally waives his or her right to preliminary examination within the 10 court days.

(b) The prosecution establishes good cause for a continuance beyond the 10-court-day period.

For purposes of this subdivision, "good cause" includes, but is not limited to, those cases involving allegations that a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or in Section 11165.6 has occurred and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. Any continuance under this paragraph shall be limited to a maximum of three additional court days.

If the preliminary examination is set or continued beyond the 10-court-day period, the defendant shall be released pursuant to Section 1318 unless:

(1) The defendant requests the setting of continuance of the preliminary examination beyond the 10-court-day period.

(2) The defendant is charged with a capital offense in a cause where the proof is evident and the presumption great.

(3) A witness necessary for the preliminary examination is unavailable due to the actions of the defendant.

(4) The illness of counsel.

(5) The unexpected engagement of counsel in a jury trial.

(6) Unforeseen conflicts of interest which require appointment of new counsel.

The magistrate shall dismiss the complaint if the preliminary examination is set or continued more than 60 days from the date of the arraignment or plea, unless the defendant personally waives his or her right to a preliminary examination within the 60 days.

California Penal Code

§ 991. (a) If the defendant is in custody at the time he appears before the magistrate for arraignment and, if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant, shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof.

(b) The determination of probable cause shall be made immediately unless the court grants a continuance for good cause not to exceed three court days.

(c) In determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sword complaint together with any documents or reports incorporated by reference thereto, which, if based on information and belief, state the basis for such information, or any other documents of similar reliability.

(d) If, after examining these documents, the court determines that there exists probable cause to believe that the defendant has committed the offense charged in the complaint, it shall set the matter for trial. If the court

determines that no such probable cause exists, it shall dismiss the complaint and discharge the defendant.

(e) Within 15 days of the dismissal of a complaint pursuant to this section the prosecution may refile the complaint.

A second dismissal pursuant to this section is a bar to any other prosecution for the same offense.

California Constitution Article 1 § 14

Felonies shall be prosecuted as provided by law, either by indictment or, after examination and commitment by a magistrate, by information.

A person charged with a felony by complaint subscribed under penalty of perjury and on file in a court in the county where the felony is triable shall be taken without unnecessary delay before a magistrate of that court. The magistrate shall immediately give the defendant a copy of the complaint, inform the defendant of the defendant's right to counsel, allow the defendant a reasonable time to send for counsel, and on the defendant's request read the complaint to the defendant. On the defendant's request the magistrate shall require a peace officer to transmit within the county where the court is located a message to counsel named by defendant.

A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.

California Constitution Article 1 § 15

The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with

counsel, and to be confronted with the witnesses against the defendant. The Legislature may provide for the deposition of a witness in the presence of the defendant and the defendant's counsel.

Persons may not twice be put in jeopardy for the same offense, be compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or property without due process of law.

United States Constitution, Article III

Section 1. The judicial Power of the United states, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Counsels; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; between Citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a state shall be a Party, the supreme Court shall have original Jurisdiction.

In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulation as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by law have directed.

United States Constitution, Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

1. Record references in this form are to the volume (1 or 2) and the page number[s] of the Joint Appendix.

2. This plaintiff was originally named in the Second Amended Complaint as "Johnny E. Jones." (1 J.A. 2) On August 9, 1988, by court order, the name was corrected to "Johnny E. James." (2 J.A. 337).

3. The Riverside County Main Jail was originally rated by the Board of Corrections of the State of California to hold 357 prisoners. At the time of the injunction hearing there were only 416 beds in the prison, yet, there were over 650 prisoners in the facility. (2 J.A. 318)

4. According to the declarations of Judge Taylor, Presiding Judge of the Riverside Municipal Court (1 J.A. 121-121), and Lt. Peter Kiyasu of the Riverside County Sheriff's Department (1 J.A. 125), Public Defenders are only provided for felony arraignments. Contrary to the statements made in the Amicus Brief by the County of Riverside p. 8, there are no attorneys provided at misdemeanor arraignments.

5. The misdemeanor charged prisoners are told in the video that: "If you have any other questions about your rights, you should ask your attorney when you appear in court and discuss your matter with your attorney." (1 J.A. 123, 128.)

6. The hearing referred to is the preliminary hearing which is a probable cause for detention hearing, not a probable cause for arrest. (See Argument, Heading III, infra).

9. This figure is reached by taking the number of warrantless felony arrestees (46) and dividing it by 29, the number of persons held over 24 hours.

13. Similarly, in *O'Shea v. Littleton,* 414 U.S. 488, 94 S.Ct. 669 (1974), an injunctive relief action was not allowed because the Court assumed plaintiffs would not violate the law in the future. Here, plaintiffs have merely

been arrested without a warrant. Their innocence of any violation of the law is presumed.

14. It has been suggested by the County (Pet. Opening Brief, p.25) that the named plaintiffs could have sought habeas corpusrelief. This remedy also is incomplete and illusory. When a writ is issued, it usually affects only the individual plaintiff. It applies only to those persons "in custody." 28 U.S.C. granted for present detainees; it cannot be granted for unnamed, unknown, future warrantless arrestees not yet in custody. It does not eliminate the challenged policy, and therefore provides no relief for the class of future warrantless arrestees.

15. By this statement, the court made it quite clear it was addressing probable cause for detention. Since Penal Code Section 859b requires a preliminary hearing within ten days after the arraignment, the court found no need to approve a pretrial procedure allowing for a probable cause for continuing detention hearing for persons charged with felonies. *In re Walters,* 15 Cal. 3d at 752, n.8.

18. Judge Gadbois in conjunction with ruling that the California arraignment process is different from the *Gerstein* process (1 J.A. 11), was quite specific that he was not going to make any rulings on the California Constitution. He stated at the preliminary injunction hearing: "My only problem with your papers is that if you think I'm going to go roaming through the Penal Code of the State of California declaring everything in there unconstitutional, you're sorely mistaken." (1 J.A. 10.) He immediately reiterated that position: "The arraignment process does not. It clearly does not comport with *Gerstein.* I'll be happy to say that, if you give me some language to that effect. But don't tell me to declare the Penal Code of California unconstitutional. That's just a little much." (1 J.A.11.)

19. Although the evidence before the trial court was that the 48 hour analysis of *People v. Chambers* was used in Riverside County, the County now contends that it applies the "two court day" requirement of Youngblood. (Pet. Opening Brief, pp. 41-43, n. 12-13.)

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In The

Supreme Court of the United States

October Term, 1990

COUNTY OF RIVERSIDE and COIS BYRD, SHERIFF OF RIVERSIDE COUNTY,

Petitioners,

v.

DONALD McLAUGHLIN, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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INTRODUCTION

Plaintiffs have now filed their Respondents' Brief. Two points remain clear. First, despite plaintiffs' repeated references to the status of this case as a class action, the question of standing turns upon the named plaintiffs' ability to allege that they have suffered a deprivation of rights that may be remedied by the injunctive relief sought. The constitutional violation alleged – failure to receive a "prompt" probable cause hearing – is necessarily temporal in nature, and the allegations of the complaint make it clear that, as to the named plaintiffs, the violations complained of had already occurred at the time the complaint was filed and hence they could not benefit from the injunctive relief sought. Under article III, plaintiffs therefore lack standing to obtain the injunctive relief sought.

Second, even assuming, arguendo, that plaintiffs possess standing in this case, they have failed to come to grips with the central issue in the lawsuit – whether a public entity may delay providing warrantless arrestees with probable cause determinations in order to incorporate them into pre-trial procedures which afford greater constitutional protections, but inevitably require additional time. The Ninth Circuit has essentially held that once the administrative steps incident to arrest, such as completion of the immediate paper work are completed, there can be no delay in providing probable cause hearings. Petitioners submit that the Ninth Circuit's ruling in this regard is expressly contrary to this Court's decisions in *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854 (1975) and *Schall v. Martin*, 467 U.S. 253, 104 S.Ct. 2403 (1984), which by their plain terms did not foreclose a public entity from incorporating probable cause determinations into existing pre-trial procedures which may afford arrestees greater protections at the expense of some delay. In accordance with California law, the County of Riverside affords warrantless arrestees with the opportunity to receive a probable cause determination at the time of arraignment which,

under California law, must be held within two court days of arrest. While the County of Riverside submits that the record before the district court establishes the constitutional propriety of providing such hearings at arraignment, even if the specific procedures utilized by the County of Riverside are found to be less than ideal, fine-tuning of existing procedures under state law is warranted, not a wholesale evisceration of state procedures by mandating an entirely separate tier of pre-trial ex parte proceedings devoted solely to determining probable cause. Thus, for these reasons, petitioners respectfully submit that the judgment should be reversed.

I.

THE NAMED PLAINTIFFS LACK ARTICLE III STANDING TO SEEK INJUNCTIVE RELIEF.

While the balance of the plaintiffs' argument on standing is found under the headings "Plaintiffs' Action Was Certified As A Class Action; The Focus Of Inquiry Re Standing Shifts To The Standing Of The Class" and "The Duly Certified Class Meets All Prerequisites For Injunctive Relief," plaintiffs grudgingly concede, as they must, that the question of standing has nothing to do with the class action status of this case. (Brief of Resps., pp. 13-17.) Rather, the Court must look solely to the question of whether the named plaintiffs had standing at the time the operative complaint was filed. As this Court noted in *Sosna v. Iowa*, 419 U.S. 393, 402, 95 S.Ct. 553, 559, 42 L.Ed.2d 532 (1975): "There must . . . be a named plaintiff who has such a case or controversy at the time the complaint is filed. . . . " Plaintiffs similarly concede that in determining whether the named plaintiffs possessed standing at the time the complaint was filed the inquiry focuses on whether " ' "the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision." ' " (Brief of Resps., p. 17, quoting Brief for Pets., p. 15, citing *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 96 S.Ct. 1917, 1924, 48 L.Ed.2d 450 (1976).)

Plaintiffs, however, are hard-pressed to explain how the alleged constitutional deprivation they suffered – failure to receive a *prompt* probable cause hearing – could ever be redressed once the time for providing a constitutionally "prompt" hearing has passed. It is important to note that the plain allegations of the Second Amended Complaint make it clear that plaintiffs are not asserting that no probable cause hearing will be provided to them at all or even that the majority of them have not yet received *a* probable cause hearing.[1] Rather, the complaint simply states they "did not receive and have not received *prompt* probable cause" hearings. (1 JA 3; emphasis added.) Thus, in contrast to the situation in *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 859 (1975), this is not a case where the alleged constitutional violation is the failure to provide any probable cause hearing; instead, the issues as framed by the complaint involve the purported failure to provide plaintiffs such hearings in a sufficiently "prompt" manner – a transgression that is necessarily defined by temporal limitations. Once the time passes for providing a constitutionally "prompt" hearing, by definition, the constitutional deprivation asserted – failure to have a prompt hearing – cannot be corrected.

Moreover, contrary to plaintiffs' assertion, their lack of standing is not necessarily tied to an ex post facto application of the 36-hour time period imposed by the

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[1] The allegations of the Second Amended Complaint make it clear that at least one named plaintiff, Donald Lee McLaughlin, was arrested in August 1987 and held in jail five days without seeing a judge and, upon no charges being filed, was no longer in custody. (1 JA 3.) The Second Amended Complaint alleges only that named defendants Johnnie E. Jones, Diana Ray Simon, and Michael Scott Hyde, are "still in custody." (1 JA 3.) Thus, named plaintiff Donald Lee McLaughlin clearly possesses no standing himself to assert any claim for injunctive relief with respect to receipt of a probable cause hearing.

district court as defining a "prompt" probable cause hearing. (Brief for Resps., pp. 15-16.) As noted above, the term "prompt" itself establishes temporal limitations, though the exact nature of the limitations, i.e., what time period is or is not prompt, may not yet be specifically known. Plaintiffs in their complaint define the constitutional violation at issue as the failure to provide "prompt" probable cause determinations and state that it has already occurred as to them, i.e., they did not and have not received *prompt* probable cause determinations. Thus, regardless of what time period is eventually used to define "prompt," according to the allegations of the complaint, that time as to the named plaintiffs has *already passed*. To allege that you did not receive a constitutionally prompt probable cause determination is to assert that you did not receive one in whatever time frame is eventually used to define "prompt." Of course, application of a concrete figure such as the 36-hour period urged by plaintiffs and eventually imposed by the district court and upheld by the Ninth Circuit, simply makes the lack of standing more apparent. For, as noted in Petitioners' Brief, if a plaintiff asserts that he or she has not received a probable cause determination within the constitutionally prompt 36-hour time period and prays for an injunction directing that defendant provide a probable cause determination within the 36-hour time period, it becomes manifest that the relief sought will in no way redress the injury asserted – once 36 hours has come and gone, no timely probable cause determination can be provided.

In a fall-back position, plaintiffs acknowledge that the expiration of the "prompt" period for receiving a probable cause determination indeed prevents them from obtaining any benefits from an injunction requiring the County to provide "prompt" probable cause hearings (Brief for Resps., p. 17). Nonetheless, they argue that "even a belated determination of plaintiffs' right to a probable cause determination would remedy, in part at least, the injuries suffered by plaintiffs. . . . " (Brief for

Resps., p. 17.) Not surprisingly, plaintiffs are somewhat evasive in describing precisely how the injunctive relief sought would, or even could, redress any present injury they were suffering. For example, plaintiffs say nothing more than: "Even if the 36-hour period has expired, the court can specify that a probable cause determination should be made within 36 hours after arrest without a warrant (which potentially will benefit both the individuals and the class). After the 36-hour period has lapsed, the court can still redress the subsequent continuing daily and hourly violations of plaintiffs' right to such determination." (Brief of Resps., p. 16.) Charitably construing plaintiffs' argument, it appears to be nothing more than the assertion that once the constitutionally "prompt" time period for providing them with a probable cause determination has passed, the district court may, nonetheless, make certain that they receive a probable cause determination in the first place, or at least faster than they would ordinarily receive such a determination. Yet, plaintiffs' argument ignores the allegations of the Second Amended Complaint, the prayer for injunctive relief contained therein and the nature of the injunction eventually sought in this case.

First, as noted above, the complaint does not allege that the named plaintiffs still in custody have not received *a* probable cause hearing, only that they have not received a *prompt* hearing. Since the complaint does not establish that no hearings were provided, it is difficult to discern how a plaintiff who has already received a hearing, albeit a purportedly belated one, could in any way benefit from an order that he or she receive a "prompt" hearing. Second, the Second Amended Complaint prays only for an injunction requiring the County to provide warrantless arrestees with "prompt" probable cause determinations. It does not direct the County to immediately provide warrantless arrestees presently in custody with such hearings, or that such hearings not be

delayed any further. It only directs that "prompt" hearings be provided, though, once again, according to plaintiffs' allegations, the time in which to provide such hearings had, as to them, already passed. Finally, the nature of the injunctive relief sought and obtained makes it clear in concrete terms that plaintiffs could not benefit from injunctive relief. As noted above, if plaintiffs' allegations concerning prompt probable cause determinations are interpreted as essentially requiring hearings to be conducted within 36 hours, then per se, an injunction requiring such hearings to be provided within 36 hours will not benefit those individuals who have already been in custody without receiving such hearings.

Quite simply, the named plaintiffs in the instant case stand in a position virtually identical to that of the plaintiff in *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660 (1983). At the time the complaint was filed, the alleged constitutional violation had already occurred and no allegation establishes any present on-going controversy and/or injury involving the named plaintiffs that would in any way be redressed by the injunctive relief requested in the complaint, much less the injunction that was eventually sought by plaintiffs and issued by the district court. Under this Court's decision in *Lyons*, plaintiffs clearly lacked standing under article III to prosecute an action for injunctive relief with respect to their receipt of constitutionally prompt probable cause hearings. As in *Lyons*, the plaintiffs may indeed have suffered injury sufficient to form the basis of a damage claim – perhaps even a class action damage claim. Yet, this in no way confers upon them a separate right to obtain injunctive relief which, if granted, will in no way provide them with any concrete benefit.

Nor, contrary to the assertions of plaintiffs and amici, will application of *Lyons* to the instant case result in wholesale erosion of constitutional rights or limit the role of the federal courts in enforcing such rights. That the named plaintiffs in this lawsuit do not, according to

allegations of their own complaint, possess standing to prosecute a claim for injunctive relief to redress the wrong which forms the basis of the action, does not mean that such alleged violations would never be subject to meaningful, review by a federal court. With respect to injunctive relief, there may be other plaintiffs who may more prudently draft their complaint and establish that they in fact do have a present case or controversy with respect to the promptness of any probable cause determination.[2] Moreover, as this Court noted in *Lyons*, even assuming, arguendo, that no plaintiff could ever establish standing for purposes of asserting a claim for injunctive relief, this does not run contrary to constitutional principles, since one of the plain implications of article III is that federal courts are courts of limited jurisdiction – they may not adjudicate all controversies, regardless of whether it might be expedient or desirable to do so.

In addition, as the Court emphasized in *Lyons*, the mere absence of an injunctive remedy does not render a particular constitutional violation and resulting injury incapable of correction or redress. An individual who has been wronged may always bring a damage action. Moreover, if, as plaintiffs assert here, the constitutional violation is allegedly widespread, such a damage action may be brought as a class action with the attendant increase in

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[2] As noted in Petitioners' Brief, there may be some instances where an action for injunctive relief may be asserted by a plaintiff with respect to a state criminal justice practice where, at the time the complaint is filed, the individual in fact is no longer in custody, nor subject to the alleged constitutional violation; but, rather, may "credibly allege" that he will again be subject to the alleged unconstitutional conduct. (*Kolendar v. Lawson*, 461 U.S. 352, 355, fn. 3, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983).) That plaintiffs are apparently unable to, or at the very least have elected not to present similar allegations, does not necessarily foreclose other plaintiffs from pursuing this means of establishing standing.

damages spread among the plaintiff class to act as a deterrent to future constitutional violations. The availability of punitive damages against individual public employees would provide a strong deterrent to future allegedly improper conduct. Plaintiffs nowhere explain why these remedies are insufficient to redress the injury suffered, nor deter the purportedly unconstitutional conduct of which they complain.

With respect to receipt of probable cause hearings, the Second Amended Complaint alleges nothing more than that the named plaintiffs did not receive and have not received *prompt* probable cause determinations. It does not state that they have not received any probable cause determination, nor that they would not receive one in the future. The constitutional violation is tied solely to the temporal limitation that a probable cause determination must be given "promptly" following arrest. Because, according to the plain allegations of the complaint, the alleged constitutional violation had already occurred, i.e., plaintiffs had been denied a prompt probable cause determination, the named plaintiffs lacked standing to assert a claim for injunctive relief to obtain "prompt" probable cause determinations. In sum, because the named plaintiffs in no way would benefit from the injunctive relief sought, they lacked standing to prosecute the instant action. For this reason, the motion for preliminary injunction should have been denied.

II.

THE COUNTY OF RIVERSIDE'S COMPLIANCE WITH CALIFORNIA LAW IN PROVIDING PROBABLE CAUSE DETERMINATIONS AT THE TIME OF ARRAIGNMENT CONSTITUTES A CONSTITUTIONALLY PROMPT HEARING UNDER THE FOURTH AMENDMENT.

A. The Fourth Amendment Does Not Prohibit Delays In Providing Probable Cause Hearings To Warrantless Arrestees Resulting From The Incorporation Of Such Hearings Into Existing Proceedings That Afford The Arrestees Greater Constitutional Protections.

As discussed at length in Petitioners' Brief, in *Gerstein* this Court expressly invited states to incorporate probable

cause determinations into existing pre-trial criminal procedures. At the same time, the Court acknowledged that providing arrestees with additional constitutional protections might consume additional time. Nonetheless, the Court cited favorably by way of example various pre-trial criminal proceedings in which probable cause determinations could be made that occurred anywhere from 72 hours to 5 days after arrest. Similarly, in *Schall v. Martin*, 467 U.S. 253, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984), this Court approved pre-trial detention procedure for juveniles, which delayed a probable cause hearing for as much as 6 days after arrest.

As *Gerstein* and *Schall* make plain, this Court has recognized that the Fourth Amendment does not prohibit a state from delaying probable cause determinations for a short time period in order to incorporate them into existing pre-trial proceedings with additional procedural protections that may require additional time. In the instant case, however, the Ninth Circuit, consistent with its prior case law, essentially applied a "per se" rule with respect to determining whether a probable cause determination is provided to arrestees in Riverside County within a constitutionally permissible time frame – finding that a probable cause determination must be made shortly after the purely administrative steps incident to arrest are completed, such as preparation of arrest reports and the like. In sum, the Ninth Circuit measures the period in which a probable cause determination must be given solely by the time necessary to provide essentially an ex parte hearing on the question of probable cause – regardless of whether additional time might be necessary to incorporate the probable cause hearing into an existing procedure, such as arraignment.

Application of the standard utilized by the Ninth Circuit for evaluating the promptness of probable cause determinations under the Fourth Amendment, essentially prevents any state or local public entity from ever incorporating a probable cause determination into an existing

pre-trial procedure, since, as this Court recognized in *Gerstein*, these more extensive proceedings necessarily involve an additional consumption of time over and above that required to provide an ex parte probable cause hearing. For example, for an arraignment, a district attorney must review the evidence, sometimes more than arrest reports and the like, make a decision as to whether a complaint should be filed or not, and then prepare and file a criminal complaint. A judge must be available to review the complaint in open court and require the plaintiff to enter a plea. Counsel must be made available for the defendant. All of these steps take time. Yet, under the standard imposed by the Ninth Circuit and applied by the district court here, any such delay is per se unreasonable.[3] The plaintiffs have argued throughout, and the district court and Ninth Circuit essentially agreed, that since the County of Riverside did not demonstrate that it could not provide ex parte review of arrest reports by a quasi-judicial officer within 36 hours of arrest, that this necessarily compelled the County to hold such hearings and prevented the County from incorporating such determinations into far more extensive and more protective proceedings, such as arraignment. This simply does not comport with the interpretation of the Fourth Amendment pronounced by this Court in *Gerstein* and reaffirmed by the Court in *Schall*.

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[3] We again note that at no point have plaintiffs attempted to argue, much less establish, that the County of Riverside is unnecessarily delaying arraignments. Indeed, as noted in Petitioners' Brief, the majority of arrestees who are not outright released are arraigned within two court days of arrest, and the vast majority arraigned within the period specified by California Penal Code section 825, i.e., two days with an extension to the third court day if the two-day period expires when court is not in session. (See Brief for the Pets., App. 8a-10a.)

Tellingly, plaintiffs do address this issue in their brief. Rather, plaintiffs again simply repeat their contention that *Gerstein* requires a probable cause determination to be made by a judicial officer once the paperwork accompanying arrest has been completed. They urge only a completely separate tier of proceedings to be imposed upon the states and do not explain how any existing pre-trial proceeding, such as arraignment, could be conducted in the time frame they argue must govern the probable cause determination.[4]

The decisions of the district court and the Ninth Circuit are based on an erroneous premise – that a probable cause hearing held beyond the time necessary to complete the most basic of paperwork following arrest is

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[4] The brief of amicus curiae American Civil Liberties Union pays lip-service to this Court's invitation in *Gerstein* that states incorporate probable cause determinations into existing pre-trial proceedings by noting that this Court had observed that some states would have to speed-up existing proceedings in order to meet Fourth Amendment standards. (*Id.*, p. 33, n. 12, citing *Gerstein*, 420 U.S. at 120.) Conspicuously, neither the ACLU nor plaintiffs offer any explanation as to how an arraignment, involving a judge, a prosecutor, and defense counsel, could in an urban area be expedited beyond the two-court day time period set forth in California Penal Code section 825. Indeed, in light of the strict standards of the Ninth Circuit and other circuit courts which have held that the probable cause determination cannot be delayed beyond completion of booking – thus requiring a probable cause hearing in some cases, in as short a time as 4 hours after arrest (*Gramenos v. Jewel Companies, Inc.*, 797 F.2d 432, 437 (7th Cir. 1986)) – it is doubtful that any existing pre-trial proceeding could be conducted within that time frame.

per se unreasonable and neither a state nor local public entity may delay the hearing solely in order to incorporate it into existing pre-trial procedures that may require additional time and provide additional protections to an arrestee. This is squarely contrary to this Court's decisions in *Gerstein* and *Schall*. Having applied this incorrect standard, the district court apparently neither considered, much less rejected, the contentions the County has made with respect to the sufficiently of the probable cause hearing made pursuant to California Penal Code sections 825 and 991. Certainly plaintiffs provided no evidence to suggest that such hearings are not provided at arraignment or are somehow insufficient, though in moving for a preliminary injunction, it would be their duty to do so. In affirming the order, the Ninth Circuit itself simply declared that the two-day time period of Penal Code section 825 was beyond the time necessary to complete the administrative steps incident to arrest and hence constituted a per se violation of *Gerstein*. Clearly, the district court's and subsequently the Ninth Circuit's application of an incorrect legal standard, in and of itself, mandates reversal of the order granting the preliminary injunction.

B. The Probable Cause Determinations Provided Pursuant To California Law Are Consistent With The Requirements Of The Fourth Amendment As Articulated By This Court In *Gerstein v. Pugh*.

In responding to petitioners' argument that the County complies with *Gerstein* by providing probable cause determinations at the time of arraignment, within two days of arrest as required by California law, plaintiffs essentially raise two points. First, plaintiffs argue that California law, in and of itself, does not require a probable cause determination of the sort purportedly required by *Gerstein*, i.e., a determination of whether there was probable cause for the arrest itself as opposed to probable cause for pre-trial "detention." At the same time, plaintiffs assert that regardless of what California law may

require with respect to providing a probable cause determination, that the County of Riverside, in the context of arraignment, does not provide such determinations. Plaintiffs contentions, however, are meritless.

Plaintiffs argue that in *In re Walters*, 15 Cal.3d 738, 126 Cal.Rptr. 239, 543 P.2d 607 (1975), the California Supreme Court did not incorporate into California law this Court's decision in *Gerstein* that warrantless arrestees be provided with a probable cause determination promptly after arrest. Specifically, plaintiffs assert that in *In re Walters*, the California Supreme Court simply decreed that warrantless arrestees would receive a hearing on probable cause for pre-trial *detention*, not a hearing as to whether there was probable cause for *arrest*. Plaintiffs, in turn, then argue that Penal Code section 991 itself simply requires the hearings set forth in *Walters*, i.e., a hearing on probable cause for detention, not a hearing on probable cause for the initial arrest. Plaintiffs' interpretation of both *In re Walters* and this Court's decision in *Gerstein* does not bear scrutiny. As review of *Gerstein* reveals, the very issue decided in *Gerstein* was that which was before the California Supreme Court in *In re Walters* – the time frame in which hearings must be provided to individuals to determine whether there is probable cause for detention.

In *Gerstein*, this Court expressly stated the chief issue before the Court to be "whether a person arrested and held for trial on an information is entitled to a judicial determination of probable cause *for detention*." 420 U.S. at 111, 95 S.Ct. at 861; emphasis added; see also, 420 U.S. at 127, Stewart, J. concurring ["this case *does not involve an initial arrest*, but rather the *continuing incarceration* of a presumptively innocent person"]. The legality or illegality of the initial taking into custody, i.e., the arrest, were not at issue. Noting that under Florida law an individual charged by information would not receive a determination of probable cause for detention short of trial, the Court expressly held that "the prosecutor's

assessment of probable cause is not sufficient alone *to justify restraint of liberty pending trial.*" 420 U.S. at 118-119, 95 S.Ct. at 865; emphasis added. Indeed, in describing the standard to be applied by a judicial officer in making this probable cause determination, the Court noted that it was "the same as that for arrest. That standard [is] . . . probable cause to believe the suspect has committed a crime. . . . " 420 U.S. at 120, 95 S.Ct. at 866. The Court therefore drew a distinction between the determination contemplated and a determination of whether there was probable cause to initially arrest, although the Court noted that the legal standard was the same. The Court then observed in a footnote that "because the standards are identical, *ordinarily* there is no *need* for further investigation before the probable cause determination can be made." 420 U.S. at 120, fn. 21, 95 S.Ct. at 866, fn. 21; emphasis added. In sum, the Court noted that since it is presumed that arresting officers have probable cause to arrest, a subsequent determination as to whether there is probable cause to continue detention in custody ordinarily would not need additional facts, since the facts presented by the officers would *ordinarily* serve the purpose. In most cases involving warrantless arrests, arrest reports prepared by arresting officers are in fact the chief source of information. The Court, however, did not rule out the possibility that additional factual investigation other than that available to arresting officers at the time the warrantless arrest took place, might be used in the context of a probable cause hearing. For example, the ALI Model Code of Pre-Arraignment Procedure cited with approval by the Court as a proper way of "testing probable cause for detention," allows the issue to be determined at a hearing within two "court days" of arrest, at a proceeding in which both the arrestee and "the state may present additional written and testimonial evidence," including live testimony if the court believes it necessary. 420 U.S. at 124, fn. 25, 95 S.Ct. at 868, fn. 25. The Court also contemplated that accelerated preliminary hearing

procedures that necessarily involve additional factual material would similarly meet the requirements of the Fourth Amendment. 420 U.S. at 124, 95 S.Ct. at 868.

This is not to say, however, that the legality of the initial arrest itself is necessarily irrelevant to information used for the subsequent judicial determination of probable cause for detention pending trial. If the initial arrest is without probable cause, evidence obtained solely by reasons of the illegal detention, i.e., through improper interrogation, would not be admissible and hence would not provide a basis for detention for criminal charges – a fact illustrated by this Court's footnote reference to *Mallory v. United States*, 354 U.S. 449, 456, 77 S.Ct. 1356, 1360, 1 L.Ed.2d 1479 (1957) in *Gerstein*. See 420 U.S. at 120, n. 21, 95 S.Ct. 866, n. 21. California law would similarly prohibit use of improperly obtained information. See *People v. Powell*, 67 Cal.2d 32, 59 Cal.Rptr. 817, 429 P.2d 137 (1967) [confession obtained by improper delay in allowing access to counsel and arraignment inadmissible]. On the other hand, if untainted evidence supports a finding of probable cause, a magistrate would, in any event, have a basis for issuing a warrant for arrest, i.e., retaining a defendant in custody regardless of the illegality of the initial arrest.[5]

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[5] Significantly, while plaintiffs attempt to characterize information contained in the amicus curiae brief of Riverside County District Attorney Grover Trask as suggesting that County law enforcement officials somehow have a policy of arresting individuals without probable cause and then using the illegal arrest to obtain information to support a subsequent finding of probable cause for arrest (Brief for Resps., p. 34, citing Amicus Brief at pp. 16-17), review of the material submitted by amicus in context belies this contention. The District Attorney notes there may be many instances in which additional facts are produced after arrest, that may be pertinent to the question of probable cause. Brief of Amicus Curiae Grover Trask, District Attorney, County of Riverside, p. 17. The

(Continued on following page)

It is therefore clear that the California Supreme Court's decision in *In re Walters* specifically addressed the very concerns resolved by this Court in *Gerstein* and indeed imposed a hearing requirement that amply met the requirements articulated by this Court in *Gerstein*.[6]

(Continued from previous page)

passage does not suggest that under such circumstances there was not pre-existing probable cause for arrest. We note that plaintiffs themselves have submitted no evidence whatsoever that the County of Riverside routinely arrests individuals without probable cause. Indeed, while plaintiffs repeatedly suggest that individuals for whom no criminal complaint is filed must necessarily have been arrested without probable cause, this obviously is not the case. There well may be probable cause for arrest, but notwithstanding that fact, a prosecutor, after review of additional factual investigation, may determine there is not sufficient evidence to establish guilt beyond reasonable doubt and hence decline to file a formal complaint.

[6] Moreover, even assuming, arguendo, that it is probable cause for the initial arrest per se that must be subject to a prompt judicial determination, California plainly provides that such determination may be requested and made at arraignment for either felonies or misdemeanors. See *People v. Powell*, 67 Cal.2d 32, 60, 59 Cal.Rptr. 817, 834, 429 P.2d 137 [first appearance at arraignment provides opportunity "to place the issue of probable cause for the arrest before a judicial officer . . .]; see also, *Youngblood v. Gates*, 200 Cal.App.3d 1302, 1311, 246 Cal.Rptr. 775 (1988). *In re Walters* itself illustrates this principle, for there the defendant requested and received a determination of probable cause for arrest at the time of arraignment. 15 Cal.3d at 753-754. In addition, although the California Supreme Court in *In re Walters* noted that the preliminary hearing system for felony arrestees in California would suffice to meet this Court's direction in *Gerstein* that warrantless arrestees receive a judicial probable cause determination for continued detention, this certainly does not obviate an arrestee's right to request a probable cause determination as to the initial arrest at arraignment as set forth

(Continued on following page)

The County of Riverside, in turn, provides hearings to warrantless arrestees in accordance with California law and this Court's decision in *Gerstein*.

In this regard, it is important to note that plaintiffs' brief contains factual errors concerning the nature of arraignment proceedings in Riverside County. For example, plaintiffs suggest that arraignment is a "one-way" proceeding, occurring in a noisy jail environment in which arrestees are given no meaningful explanation of their rights, nor any meaningful opportunity to speak to a judge or receive representation of counsel. Brief of Resps., p. 47. Review of the record in the case, however, belies plaintiffs' characterization of these hearings.

As set forth in the evidence submitted to the district court, each day in which California courts are in session, i.e., Monday through Friday, prisoners are arraigned via a *two-way* video system in the jail chapel. 1 JA 121 ["The person being arraigned is able to communicate verbally with the Court"]. In order to provide the arrestees with an understanding of what takes place at arraignment, they are shown a video which explains the process and clearly explains their rights. They are admonished that if they have any questions they may ask their attorneys when they appear in court following the video tape, i.e., at the arraignment itself. 1 JA 123. The video shown to individuals arrested for misdemeanors specifically advises them of their right to receive a probable cause determination during the hearing if they request one. It

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in *People v. Powell*. As this Court observed by footnote in *Gerstein*, however, it may well be that an initial determination that probable cause existed for arrest would necessarily result in a finding of probable cause for continued detention. See 420 U.S. at 120, fn. 21, 95 S.Ct. at 866, fn. 21. Here, of course, the County of Riverside specifically advises arrestees that they have a right to a determination of probable cause for arrest at the time of arraignment. 1 JA 123, 124.

also advises them of the right to counsel. *Id.* Plaintiffs attempt to suggest that there is no public defender available for misdemeanor hearings and indeed that individuals arraigned for misdemeanors do not and cannot have counsel present for arraignment. Not surprisingly, plaintiffs provide no evidence to support this contention. While the declarations submitted by the County do not, as they do with felony arraignments, specify that a public defender is present at misdemeanor arraignments, there is no evidence that a public defender is *not* there.[7] More significantly, of course, as noted in Petitioners' Brief, California law expressly provides the right to counsel at arraignment and there is no evidence to suggest that County of Riverside prevents individuals from exercising this right, whether they can afford to or not. Penal Code § 987(a). Indeed, many individuals may well have counsel prior to the time of arraignment and counsel may be present if he or she so desires. Thus, at arraignment, individuals arrested for misdemeanors are entitled to have counsel, who may himself participate in the probable cause determination and, in fact, even negotiate an ultimate plea as to the charges.[8]

Similarly, felony arrestees are shown a video tape in which they are advised of all their rights, including specifically the right to receive a determination of probable

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[7] In his amicus brief, the District Attorney for the County of Riverside notes that in fact public defenders are supplied at arraignment.

[8] Plaintiffs attempt to suggest that attorneys at arraignment cannot meaningfully participate in the probable cause determination by citing a passage from *In re Walters* limiting defense cross-examination of *witnesses* at such hearings. Brief of Resps., p. 29, citing 15 Cal.3d at 753. However, the cited passage does not suggest that counsel may not present argument to the court on probable cause based upon the statements of the witness or on the arrest report, complaint and other documents that are before the court.

cause for arrest. Plaintiffs argue that the County does not provide felony arrestees with a probable cause determination at the time of arraignment, but rather simply advises them that they are to receive such determinations within a "reasonable" time which plaintiffs interpret to be at the time of preliminary hearing. As noted in Petitioners' Brief, even if the advisement of rights to felony arrestees is ambiguous in this regard, it does not alter the fact that the intention of the County of Riverside is to provide such hearings at arraignment and in fact such hearings are provided if requested.[9] However, an order requiring the County to more clearly advise arrestees of these rights is altogether different from a mandate that the County foresake California procedures entirely and provide ex parte hearings within 36 hours of arrest. Plainly, the standard applied by both the district court and Ninth Circuit would essentially prohibit a public entity from providing probable cause determinations to felony arrestees within the time frame of arraignment.

In sum, having probable cause determined at the time of arraignment, as required by California law, in and of itself provides an arrestee with concrete benefits, notably the presence of counsel, that far outweigh the minimal protections offered by the ex parte proceedings urged by plaintiffs here. At the same time, these additional protections justify the minimal delay that is necessary in order to provide them.

In *Gerstein*, this Court expressly invited the states to incorporate probable cause determinations into existing pre-trial proceedings. Accordingly, California has done

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[9] Petitioners again note, however, that this is not to say that a probable cause for detention at that time of preliminary hearing, no later than ten days after arraignment, would not meet the requirements of *Gerstein* and *Schall* in light of the strict time limitation on such hearings and the significant procedural protections afforded arrestees at these hearings. See Brief of Pets., pp. 41-42, n. 12.

so, requiring such determinations to be made at the time of arraignment, by no later than two court days after arrest. This is the policy followed by the County of Riverside, yet at the same time it is the policy declared unconstitutional by the district court and by the Ninth Circuit. Petitioners therefore respectfully request the Court to reverse the district court order granting a preliminary injunction.

CONCLUSION

For the foregoing reasons, petitioners respectfully submit that the judgment should be reversed.

Respectfully submitted,

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No. 89-1817

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

COUNTY OF RIVERSIDE and COIS BYRD,
SHERIFF OF RIVERSIDE COUNTY,
Petitioners,

v.

DONALD LEE MCLAUGHLIN, et al.,
Respondents.

BRIEF AMICUS CURIAE OF THE STATE OF CALIFORNIA IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

1. Where a state, pursuant to this Court's invitation in Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 859 (1975) incorporates probable cause determinations for warrantless arrestees into existing pre-trial procedures such as arraignment that afford the arrestee additional constitutional protections, must the additional time necessary to provide these more extensive proceedings be factored into any determination as to whether the probable cause hearing is sufficiently "prompt" under Gerstein?

2. May a state, consistent with the requirements of the Fourth Amendment as interpreted by this Court in Gerstein v. Pugh, set a uniform outside period of two days, exclusive of Saturdays, Sundays and holidays, in which to provide warrantless arrestees with probable cause determinations, or must the constitutional

"promptness" of probable cause hearings depend upon the circumstances of each case and preclude the setting of any uniform outside time period in which to provide such determinations?

3. Does a plaintiff arrested without a warrant and allegedly held without receiving a constitutionally prompt probable cause determination possess Article III standing for purposes of obtaining an injunction requiring a public entity to provide warrantless arrestees with constitutionally prompt probable cause hearings when (a) the time in which to provide plaintiff with a constitutionally prompt hearing has passed and (b) there is no allegation that the plaintiff will again be subjected to the allegedly unconstitutional practices of the public entity?

This brief of amicus curiae addresses only questions 1 and 2.

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INTEREST OF AMICUS CURIAE

Amicus curiae, the State of California, has a comprehensive statewide pre-trial procedure which provides for prompt Gerstein v. Pugh, 420 U.S. 103 (1975) probable cause determinations.

The Ninth Circuit's decision, requiring probable cause determinations in Riverside County within 36 hours of arrest, requires an unnecessary and costly additional procedure, conflicts with existing state law, and precludes the State of California from adopting any uniform statewide procedure for probable cause determinations. If not overturned, the Ninth Circuit decision will require similar ad hoc factual determinations of promptness to be made in each of California's 58 counties.

SUMMARY OF ARGUMENT

California's existing pretrial procedure provides for prompt probable

cause determinations at arraignment and preliminary hearing.

The Ninth Circuit failed to give any consideration to California's pretrial procedure "viewed as a whole" (Gerstein v. Pugh, supra, 420 U.S. at p. 123), and incorrectly read Gerstein to require a probable cause determination after the time necessary to complete "the administrative procedures incident to the arrest," without regard to any other considerations. (McLaughlin v. County of Riverside, 888 F.2d 1276, 1278 (9th Cir. 1989).)

The Ninth Circuit's analysis is incompatible with the Court's recognition in Gerstein of the desirability for "flexibility" and "experimentation by the State's" concerning the timing of probable cause hearings. (Gerstein v. Pugh, supra, 420 U.S. at p. 123.) It is also inconsistent with the Court's conclusion

in Schall v. Martin, 467 U.S. 253 (1984), which upheld pretrial detention of a juvenile for up to six or seven days prior to receiving a probable cause determination.

The Ninth Circuit opinion imposes a costly duplicative layer of pretrial procedure, conflicts with existing California pretrial procedure, and effectively prevents the state from adopting any uniform statewide procedure for probable cause determinations.

Under the Ninth Circuit's rationale Federal District Courts will have to make ad hoc factual determinations for each of California's 58 counties, and perhaps additional determinations for particular areas within each county, as to how much time is necessary to complete "the administrative procedures incident to the arrest."

ARGUMENT

CALIFORNIA'S EXISTING PRETRIAL PROCEDURE PROVIDES FOR PROMPT PROBABLE CAUSE DETERMINATIONS IN COMPLIANCE WITH GERSTEIN V. PUGH, 420 U.S. 103 (1975)

The Court held in Gerstein v. Pugh, supra, 420 U.S. 103, that a person arrested and held for trial under a prosecutor's information was constitutionally entitled to a judicial determination of probable cause for extended pretrial restraint of liberty. (Id., at p. 114.)

Under the amended Florida procedure at issue in Gerstein, a person arrested without a warrant and charged by information could be jailed or subjected to other restraints "pending trial without any opportunity for a probable cause determination." (Gerstein v. Pugh, supra, 420 U.S. at p. 116, emphasis added.) The magistrate at the "first appearance" did not make a determination of probable

cause, and the Florida rule amendments changed the procedure for preliminary hearings, restricting them to felony charges and codifying the rule that "no hearings are available to persons charged by information or indictment. (Citations)." (Gerstein v. Pugh, supra, 420 U.S. at p. 109.)[1]

Gerstein did not hold that a probable cause determination had to be made at a particular point in time prior to trial. The amended Florida procedures dealt with by the Court in Gerstein did not provide "any opportunity" for such a

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1. Under the former Florida procedural rules, the "only possible methods for obtaining a judicial determination of probable cause" were "a special statute allowing a preliminary hearing after 30 days" and arraignment, which the District Court found was "often delayed a month or more after arrest. (Citation)." (Gerstein v. Pugh, supra, 420 U.S. at p. 106.) As a result, even under the former rules a person charged by information could be detained under Florida law for "a substantial period solely on the decision of a prosecutor." (Ibid.)

determination pending trial. (Gerstein v. Pugh, supra, 420 U.S. at p. 116.) The Court stated only that the determination must be made by a judicial officer either before or "promptly" after arrest. (Id., at p. 125.)

Eschewing any particular procedure or fixed point in time for the determination of probable cause, the Court emphasized the "desirability of flexibility and experimentation by the States." (Gerstein v. Pugh, supra, 420 U.S. at p. 123.) The Court concluded that there was "no single preferred pretrial procedure, and the nature of the probable cause determination usually will be shaped to accord with a State's pretrial procedure viewed as a whole." (Ibid.) Noting the variety of existing procedures, the Court observed that its holding would require only "minor adjustment" of the timing of existing procedures in some

states and perhaps no modification at all in others. (Gerstein v. Pugh, supra, 420 U.S. at pp. 124-125 [fns. omitted].)

Part of the reason underlying the Court's refusal to mandate a particular procedure or fixed time requirement was the Court's recognition of the differences in existing state pretrial procedures. Thus, the Court noted that some states, such as Alabama, provided an adversary "full preliminary hearing." (Gerstein v. Pugh, supra, 420 U.S. at pp. 119-120.) The Court also noted that the standard of proof, while usually referred to by the generic term "probable cause," may approach "a prima facie case of guilt" in some jurisdictions (Id., at p. 119), going beyond the protection afforded by the probable cause for arrest standard established by Gerstein (Id., at p. 120.)

While Gerstein did not mandate more than a minimal probable cause

procedure, neither did the Court in Gerstein mandate that states with procedures affording even greater rights to pretrial detainees than required by Gerstein must reduce their level of protection in order to afford an even "prompter" probable cause determination.

Instead, consistent with the concept of federalism, the Court expressed its approval of "flexibility and experimentation by the States" (Gerstein v. Pugh, supra, 420 U.S. at p. 123) in their efforts to comply with the Constitution.

Shortly after Gerstein was decided, the California Supreme Court specifically addressed the impact of Gerstein on California's procedures. In In re Walters, 15 Cal.3d 738, 126 Cal.Rptr. 239, 543 P.2d 607 (1975), the California Supreme Court carefully reviewed Gerstein and concluded that

California's then existing procedures governing the pretrial detention of those charged with misdemeanors who were arrested with or without a warrant "do not presently comport with our implementation of the constitutional requirements of Gerstein since the defendant is not afforded a post-arrest judicial determination that probable cause exists for his continued detention." (In re Walters, supra, 15 Cal.3d at p. 747, 126 Cal.Rptr. at p. 246, 543 P.2d at p. 614.) The court held that, unless waived, "a judicial determination of probable cause is required in every case where a defendant charged with a misdemeanor is detained awaiting trial." (Ibid.)

Walters held that a probable cause determination was required, on request, in all misdemeanor cases, whether or not the arrest was made pursuant to a warrant, notwithstanding the California

Supreme Court's recognition that in so holding it was going beyond Gerstein's strict requirements. (In re Walters, supra, 15 Cal.3d at p. 749, 126 Cal.Rptr. at p. 247, 543 P.2d at p. 615.)

Walters next considered the "structure" a Gerstein probable cause hearing should take. (In re Walters, supra, 15 Cal.3d at p. 750, 126 Cal.Rptr. 248, 543 P.2d 616.) The California Supreme Court expressed its preference for arraignment as the "most appropriate" stage of the misdemeanor proceedings to make the probable cause determination:

> "First, the determination of probable cause is to be made a matter of record at the time of arraignment or bail setting which usually takes place simultaneously within two days after a misdemeanor suspect's arrest (Pen. Code, §§ 822, 825)

unless bail is posted earlier in accordance with the warrant for arrest, if any, an order fixing bail, if any, or statutory schedules (Pen. Code, § 1269b). Although we consider arraignment to be the most appropriate stage of the proceedings at which to make a judicial determination of probable cause that the defendant is being properly detained, the parties may stipulate to a later determination or, for good cause, the court may continue the determination on defendant's motion therefor. However, it is incumbent upon the defendant to move the court to make or to continue the determination. His failure to do so at the time of arraignment, with notice of his

right thereto, will be deemed to constitute a waiver of that right." (In re Walters, supra, 15 Cal.3d at p. 750, 126 Cal.Rptr. at p. 248, 543 P.2d at p. 616, emphasis added.)

The California Supreme Court noted that a defendant "has a right to counsel at all stages of criminal proceedings (Cal. Const., art. I, § 15; Pen. Code, §§ 858, 859; In re Johnson, 62 Cal.2d 325, 329 [42 Cal.Rptr. 228, 398 P.2d 420] (1965))" and if he is so represented, "counsel would normally appear in a defendant's behalf during the probable cause determination," although "Gerstein does not compel such representation. (Gerstein v. Pugh, supra, 420 U.S. 103, 122 [43 L.Ed.2d 54, 70].)." (In re Walters, supra, 15 Cal.3d at p. 750, 126 Cal.Rptr. at p. 248, 543 P.2d at p. 616.)

Thus, California law as construed in Walters goes substantially beyond what Gerstein requires in providing for both the presence of the defendant and for counsel at an adversarial probable cause determination.

Walters involved a defendant accused of a misdemeanor, and the California Supreme Court noted that the procedures it required were "framed in terms of misdemeanor proceedings." (In re Walters, supra, 15 Cal.3d at p. 743 (fn. 2), 126 Cal.Rptr. at p. 243 (fn. 2), 543 P. 2d at p. 611 (fn. 2).) However, the California Supreme Court addressed felony procedure as well, and concluded that California's existing "procedures which provide for a preliminary hearing in the case of a felony charged by information fully comply with Gerstein requirements." (In re Walters, supra, 15 Cal.3d at p. 752

(fn. 8), 126 Cal.Rptr. at p. 249 (fn. 8), 543 P.2d at p. 617 (fn. 8).)

Under California law, both the defendant and the People in a felony case have the right to a preliminary examination "at the earliest possible time," and unless both waive that right or good cause for a continuance is found as provided for in Penal Code section 1050, "the preliminary examination shall be held within 10 court days of the date the defendant is arraigned or pleads, whichever occurs later." (Pen. Code, § 859b.)

If the defendant is in custody, the magistrate must dismiss the complaint "if the preliminary examination is set or continued beyond 10 court days from the time of the arraignment or plea and the defendant has remained in custody for 10 or more court days" solely on that complaint, unless the defendant

"personally waives" his right to a preliminary examination within the 10 court days or the prosecution establishes good cause for a continuance beyond the 10 court day period. (Pen. Code, § 859b.)

In contrast, the Florida amended procedures at issue in Gerstein provided no right to a preliminary hearing for prosecutions by information. (Gerstein v. Pugh, supra, 420 U.S. at p. 109.) Moreover, the probable cause determination under California law takes place in the context of an adversarial proceeding with the presence of the defendant who is represented by counsel, protections which go substantially beyond the requirements of Gerstein.

In addition, "one accused of a felony can challenge the existence of probable cause by a motion pursuant to Penal Code section 995, and a hearing thereon would constitute, among other

things, a timely judicial determination of the existence of probable cause to detain pending trial. An accused's failure to so move will be deemed to constitute a waiver of his right to such a determination." (In re Walters, supra, 15 Cal.3d at p. 752 (fn. 8); 126 Cal.Rptr. at p. 250 (fn. 8), 543 P.2d at p. 618 (fn. 8), emphasis added.) In contrast, Florida law provided no means by which the defendant prosecuted by information could challenge the existence of probable cause pending trial. (Gerstein v. Pugh, supra, 420 U.S. at p. 116.)

In response to Walters, the California Legislature enacted Penal Code section 991 (People v. Ward 188 Cal.App.3d Supp. 11, 15, 235 Cal.Rptr. 287 (1986)), which codifies the procedures suggested in Walters for misdemeanor arrestees. Penal Code section 991 requires a determination

of probable cause at the time of arraignment, on request by the defendant:

"(a) If the defendant is in custody at the time he appears before the magistrate for arraignment and, if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant, shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof.

"(b) The determination of probable cause shall be made immediately unless the court grants a continuance for good cause not to exceed three court days.

"(c) In determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference thereto, which, if based on information and belief, state the basis for such information, or any other documents of similar reliability.

"(d) If, after examining these documents, the court determines that there exists probable cause to believe that the defendant has committed the offense charged in the complaint, it shall set the matter for trial.

"If the court determines that no such probable cause exists, it shall dismiss the complaint and discharge the defendant.

"(e) Within 15 days of the dismissal of a complaint pursuant to this section the prosecution may refile the complaint.

"A second dismissal pursuant to this section is a bar to any other prosecution for the same offense." (Pen. Code, § 991.)

By statute in California, arraignment before a magistrate must take place "without unnecessary delay, and, in any event, within two days" after arrest, "excluding Sunday and holidays," with the proviso that when the two day period expires "at a time when the court in which

the magistrate is sitting is not in session," the time is extended "to include the duration of the next regular court session on the judicial day immediately following." (Pen. Code, § 825, subd. (a)(1).[2/] See also Pen. Code, § 849, subd. (a) [when an arrest is made without a warrant, the person arrested, if not otherwise released, shall be taken "without unnecessary delay" before a

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2. There is a conflict among California Courts of Appeal as to whether the term "two days" means "48 hours" from the time of arrest (see People v. Chambers (1969) 276 Cal.App.2d 89, 80 Cal.Rptr. 672; People v. Lee (1970) 3 Cal.App.3d 514, 521, 83 Cal.Rptr. 715, cert. denied, 402 U.S. 999 (1971); People v. Ross (1963) 236 Cal.App.2d 364, 368, 46 Cal.Rptr. 41) or two "calendar" days from the time of arrest (see majority and dissenting opinions in Youngblood v. Gates (1988) 200 Cal.App.3d 1302, 246 Cal.Rptr. 775). This conflict is not critical here, since even the two "calendar" day interpretation would not, in the view of amicus, contravene Gerstein. Moreover, the 36 hour period affirmed by the Ninth Circuit in this case could be violated under either interpretation of state law.

magistrate and a complaint stating the charge against the arrested person shall be laid before such magistrate].)

The California provisions on arraignment "do not authorize a two-day detention in all cases." (People v. Thompson, 27 Cal.3d 303, 329, 165 Cal.Rptr. 289, 303, 611 P.2d 883, 897 (1980).) The two day period is the outside limit on what may be considered a necessary delay, and a detention of less than two days, if unreasonable under the circumstances, is "'in violation of the statute' and of the Constitution." (Ibid.)[3/]

The Ninth Circuit simply ignored existing California procedure "viewed as a

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3. Article I, section 14 of the California Constitution mandates that persons accused by felony complaint be taken "without unnecessary delay" before a magistrate. (People v. Thompson, supra, 27 Cal.3d at p. 329, 165 Cal.Rptr. at p. 303, 611 P.2d at p. 897.)

whole" (Gerstein v. Pugh, supra, 420 U.S. at p. 123) in concluding that Gerstein mandates probable cause determinations "as soon as the administrative steps incident to arrest were completed" (McLaughlin v. County of Riverside, supra, 888 F.2d 1276, 1278), i.e. within 36 hours from the time of arrest.

The Ninth Circuit misconstrued Gerstein in reaching its conclusion. The Court in Gerstein referred to a policeman's on-the-scene assessment of probable cause as justifying the arrest of a person and "a brief period of detention to take the administrative steps incident to arrest" (Gerstein v. Pugh, supra, 420 U.S. at pp. 113-114), but did not hold that this period was the maximum permissible time that could elapse before a magistrate's subsequent determination of probable cause. To the contrary, in discussing when the magistrate's

determination of probable cause should be made, the Court engaged in an extended discussion, emphasized that "state systems of criminal procedure vary widely," and concluded that since there was "no single preferred pretrial procedure" the nature of the probable cause determination "usually will be shaped to accord with a State's pretrial procedure viewed as a whole." (Gerstein v. Pugh, supra, 420 U.S. at p. 123.)

If the Court had intended to require a probable cause determination by a magistrate immediately after the brief period of detention necessary to take "the administrative steps incident to arrest," the Court's discussion of the wide variety of "state systems of criminal procedure" was irrelevant. The time necessary to take "the administrative steps incident to arrest" can be calculated, just as the District Court did here, without reference

to the wide range of "state systems of criminal procedure." Nor does the Court's statement in Gerstein that there is "no single preferred pretrial procedure" make sense if the Court meant to mandate a probable cause determination by a magistrate as soon as "the administrative steps incident to arrest" have been completed. Likewise, the Court's ultimate conclusion that the nature of the probable cause determination usually will be shaped to accord "with a State's pretrial procedure viewed as a whole" loses all meaning if the Court intended to mandate a probable cause determination by a magistrate as soon as "the administrative steps incident to arrest" have been completed. Consideration of a state's "pretrial procedure viewed as a whole" only has significance if the Court did not intend to mandate a magistrate's determination of probable cause as soon as

"the administrative steps incident to arrest" have been completed.

In concluding that only the time necessary to complete "the administrative steps incident to arrest" need be considered, the Ninth Circuit failed to give any consideration whatever to California's pretrial procedure "viewed as a whole" (Gerstein v. Pugh, supra, 420 U.S. at p. 123), and instead made an ad hoc determination that permitting "as much as forty-eight hours plus an intervening Sunday or holiday to elapse before the determination is made" is not in accord with Gerstein's requirement of a determination "'promptly after arrest.'" (McLaughlin v. County of Riverside, supra, 888 F.2d at p. 1278.)

This approach simply ignored the conclusion of the California Supreme Court in Walters, which declared the time of arraignment in misdemeanor cases to be

"the most appropriate stage of the proceedings at which to make a judicial determination of probable cause that the defendant is being properly detained . . ." (In re Walters, supra, 15 Cal.3d at p. 750, 126 Cal.Rptr. at p. 248, 543 P.2d at p. 616.)

Even assuming that a fixed number of hours following arrest, rather than a particular stage of the pretrial proceedings, was the appropriate focus, the conclusion of the Ninth Circuit is incompatible with Schall v. Martin, supra, 467 U.S. 253, where the Court upheld a New York statute authorizing pretrial detention of an accused juvenile delinquent for up to six or seven days prior to receiving a probable cause determination. Under the New York Statute at issue in Schall, if the juvenile was detained at his initial appearance and denied the charges, he was entitled to a

probable cause hearing to be held "not more than three days after the conclusion of the initial appearance or four days after the filing of the petition, whichever is sooner," and for good cause shown the hearing could be adjourned for up to three additional court days. (Schall v. Martin, supra, 467 U.S. at p. 270 and fn. 19.)

The Court noted in Schall that Gerstein did not "mandate a specific timetable" for a probable cause determination. (Schall v. Martin, supra, 467 U.S. at p. 275.) The Court reemphasized its concern with "flexibility" and "informality," while at the same time ensuring adequate predetention procedures. (Ibid.)

Not only did the Court in Schall find a delay of up to six or seven days to be constitutionally inoffensive, but the Court observed that this "brief delay" in

the probable-cause hearing 'may actually work to the advantage of the juvenile since it gives his counsel, usually appointed at the initial appearance pursuant to FCA section 320.2(2), time to prepare." (Schall v. Martin, supra, 467 U.S. at p. 277, fn. 28.) The same is true under California procedure, and requests for continuances by defense counsel have been frequent under California law.

The New York procedures at issue in Schall provided additional adversary procedural protections beyond that mandated for the probable cause hearing in Gerstein, as do California pretrial procedures. (Schall v. Martin, supra, 467 U.S. at p. 275.) The Court evaluated the delay in the probable cause determination in the context of the overall procedures provided under New York law (Id., at pp. 275-277), in holding a possible delay of six or seven days permissible. California

provides for the presence of the defendant and his representation by counsel in an adversarial setting, protections which go considerably beyond the minimum requirements of Gerstein, and which support the reasonableness of the delay under California law.

Under existing California law arraignment must take place "without unnecessary delay" and within a maximum of two days after arrest (excluding Sundays and holidays). As previously noted, the two day statutory period is the outside limit on what may be considered a necessary delay, and a detention of less than two days, if unreasonable under the circumstances, is "'in violation of the statute' and of the Constitution." (People v. Thompson, supra, 27 Cal.3d 303, 329, 165 Cal.Rptr. 289, 303, 611 P.2d 883, 897.)

Thus, the flat 36 hour rule adopted by the District Court and upheld by the Ninth Circuit will provide little in the way of promptness over existing California law, but will do much to disrupt and unsettle existing state pre-trial procedure.

The destabilizing effect of the Ninth Circuit's decision is emphasized by the fact that there are now different probable cause procedures and time requirements in effect in California. In the County of Santa Clara, a non-adversary probable cause hearing must be held, pursuant to District Court order and Ninth Circuit decision, within 24 hours after arrest. (Bernard v. City of Palo Alto, 699 F.2d 1023 (9th Cir. 1983).) In Orange County, a non-adversary hearing must be held within 36 hours of arrest, pursuant to a stipulated order and judgment resulting from another District Court

case, Scott v. Gates, CV 84-8647-RG (C.D. Cal. Oct. 3, 1988.) San Bernardino County is likewise subject to a District Court judgment requiring a non-adversary 36 hour probable cause hearing. Leaving aside Riverside County (the subject of the instant case), the remaining California counties are subject to state law as to the timing and adversary nature of probable cause determinations.

If the judgment in the instant case is not overturned, under the Ninth Circuit's rationale District Courts will have to make ad hoc factual determinations for each of these remaining 54 California counties as to how much time is necessary to complete "the administrative procedures incident to the arrest." (McLaughlin v. County of Riverside, supra, 888 F.2d at p. 1278.) Different factual determinations already have been and presumably will continue to be made in different counties.

In fact, there could be different factual determinations made by a District Court within a particular county. This potential was expressly recognized by the Ninth Circuit in its opinion. In upholding the reasonableness of the 36 hour rule adopted by the District Court, the Ninth Circuit noted that the District Court rule applied only to "inmates at the Riverside County Central Jail," and that the District Court "purposefully did not set any fixed time limit for Riverside's implementation of satisfactory determination procedures in other parts of the County." (McLaughlin v. County of Riverside, supra, at pp. 1278-1279; emphasis added.) This strongly suggests that the District Court is free, under the Ninth Circuit's understanding of Gerstein, to set different time periods for different parts of the same county.

It is not even clear to amicus whether under the Ninth Circuit decision a defendant would be entitled to <u>two</u> probable cause determinations: the 36 hour non-adversary determination mandated by the District Court, and the adversary determination provided for by California law. A defendant's statutory right under California law to an adversary probable cause determination at which he is present and represented by counsel is separate from the non-adversary procedure mandated by the District Court and approved by the Ninth Circuit.

The net effect of the Ninth Circuit's reasoning is not only to undermine existing California statutory procedure, but also necessarily to preclude <u>any</u> uniform statewide procedure for probable cause determinations. Instead, under the Ninth Circuit's view, a series of ad hoc factual determinations

will have to be made by District Courts for each county, and possibly within each county. The Ninth Circuit's approach seriously intrudes on the ability of the State of California to establish and regulate a uniform statewide pretrial procedure for probable cause determinations.

The Court's recognition in Gerstein of the desirability of "flexibility" and "experimentation by the States" belies the approach taken by the District Court and the Ninth Circuit here. The ad hoc 36 hour rule adopted by the District Court and sanctioned by the Ninth Circuit was adopted without reference to California's "pretrial procedure viewed as a whole" (Gerstein v. Pugh, supra, 420 U.S. at p. 123) and is manifestly at odds with the opinion expressed by the Court in Gerstein, and with the conclusion reached

in Schall. The Ninth Circuit's decision should, accordingly, be reversed.

CONCLUSION

For the foregoing reasons, amicus curiae urges that the decision of the Ninth Circuit be reversed.

Respectfully submitted,

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No. 89-1817

COUNTY OF RIVERSIDE and COIS BYRD,
SHERIFF OF RIVERSIDE COUNTY,
Petitioners,

v.

DONALD LEE MCLAUGHLIN, et al.,
Respondents.

FREDERICK R. MILLAR, JR., a member of the Bar of the Supreme Court of the United States, states:

That his business address is 110 West A Street, Suite 700, San Diego, California, 92101; that on November 8, 1990, he caused to be served a true copy of the attached Brief of the State of California as Amicus Curiae in the above-entitled matter, on counsel for Petitioners and counsel for Respondents by having the same placed in an enveloped addressed as follows:

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No. 89-1817

In The

Supreme Court of the United States

October Term, 1990

COUNTY OF RIVERSIDE and COIS BYRD,
SHERIFF OF RIVERSIDE COUNTY,

Petitioners,

vs.

DONALD LEE McLAUGHLIN, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR THE CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION AS AMICUS CURIAE SUPPORTING PETITIONERS

Appellate Committee of the
California District Attorneys
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QUESTION PRESENTED

Whether the motion for preliminary injunction should have been denied since the California statutory provisions provide defendants with timely probable cause determinations required by the Constitution as set forth in *Gerstein v. Pugh*.

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THE MOTION FOR PRELIMINARY INJUNCTION SHOULD HAVE BEEN DENIED AS THE CALIFORNIA STATUTORY PROVISIONS PROVIDE DEFENDANTS WITH TIMELY PROBABLE CAUSE DETERMINATIONS REQUIRED BY THE CONSTITUTION AS SET FORTH IN *GERSTEIN V. PUGH*. 3

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The opinion of the Court of Appeals for the Ninth Circuit is reported at 888 F.2d 1276. The memorandum order of the United States District Court for the Central District of California granting a preliminary injunction in the case has not been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on November 9, 1989. A petition for rehearing was denied by the Ninth Circuit on April 10, 1990. The petition for a writ of certiorari was granted on October 1, 1990. The jurisdiction of this court rests upon 28 U.S.C. section 1254(1).

INTEREST OF AMICUS CURIAE

The Appellate Committee of the California District Attorneys Association is a committee created by the District Attorneys of California to utilize and coordinate the resources of all the District Attorney's Offices throughout the state for the purpose of presenting their views in cases which may have major statewide impact upon the prosecution of criminal offenses.

The interest of Amicus Curiae arises from the sensitive and important Fourth Amendment issues of persons incarcerated by warrantless arrest, balanced against the

government's important right in administratively processing an inmate pursuant to the statutory requirements of the California Penal Code.

CONSENT OF PARTIES

Counsel has requested consent of all parties. Counsel of record for both the Petitioner and Respondent have consented to the filing of this Amicus Curiae Brief in Support of Petitioners. Additionally, pursuant to Rule 37.5, consent to the filing of a brief of an amicus curiae is not necessary when, as here, the brief is presented on behalf of a political subdivision of a State. The present brief is submitted on behalf of the 58 county district attorney offices in California through the California District Attorney's Association.

SUMMARY OF ARGUMENT

The Supreme Court in *Gerstein v. Pugh*, 420 U.S. 103 held that the Fourth Amendment requires a probable cause determination by a magistrate as a condition of any significant pretrial confinement. *Gerstein* did not specify any particular time within which such a hearing must be held and left the implementation of its holding up to the individual states. In response to *Gerstein*, California enacted statutes which mandated that review within two days after an arrest excluding Sundays and holidays.

California's pre-trial proceedings for arraignment and probable cause determination fully comply with the

mandate of the Fourth Amendment as set forth in *Gerstein*. The trial court's order that such hearings be held within 36 hours therefore exceeded the scope of injunctive relief necessary to provide the charged defendants with their constitutional rights as mandated in *Gerstein*.

ARGUMENT

THE MOTION FOR PRELIMINARY INJUNCTION SHOULD HAVE BEEN DENIED AS THE CALIFORNIA STATUTORY PROVISIONS PROVIDE DEFENDANTS WITH TIMELY PROBABLE CAUSE DETERMINATIONS REQUIRED BY THE CONSTITUTION AS SET FORTH IN *GERSTEIN V. PUGH*

In *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975), this honorable court held the Fourth Amendment required a determination of probable cause by a neutral and detached magistrate "as a condition for any significant pretrial restraint on liberty." 420 U.S. at 125. The court said at pages 113-114, "a policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest. Once the suspect is in custody, however, the reasons that justify dispensing with the magistrate's neutral judgment evaporate."

Gerstein clearly holds the separate states are allowed to develop their own procedures to implement the rules the court set forth within its opinion. It is certainly clear that the Supreme Court never envisioned a state the size of California being subjected to 58 different procedures

for handling probable cause determinations.[1] "[W]e recognize the desirability of flexibility and experimentation *by the States*. It may be found desirable, for example, to make the probable cause determination at the suspect's first appearance before a judicial officer, (Citation), or the determination may be incorporated into the procedure for setting bail or fixing other conditions of pretrial release." *Gerstein, supra,* 420 U.S. at page 123. (Emphasis added.) This is, as will be set forth below, precisely the procedure adopted in California.

In *Bernard v. City of Palo Alto,* 699 F.2d 1023 (1983), this court held the trial court's determination that the probable cause hearing had to be made within 24 hours of arrest *"was eminently reasonable."* While it may be correct to conclude 24 hours is a reasonable time period under the circumstances of that case, that conclusion does not address the true issue. The question which should have been answered in *Bernard* and must be answered here is whether *Gerstein* mandates a specification of what is a reasonable time for making the probable cause determination in each county within the State? The answer is no.

Varied circumstances in each county as well as varied terrain and distances between the court houses within each county will produce a multifaceted picture as hearings are conducted in each county to determine what is

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[1] California has, as this Court is undoubtedly aware, 58 separate and distinct counties. Each county has its own prosecuting agency as well as many law enforcement agencies within its boundaries. For instance, Orange County has 22 distinct police departments and a separate sheriffs department.

"reasonable" within that county's unique makeup. The end will be multiplicity of rules dependent upon which trial court hears each case and the evidence, unique to each county, developed during the trial. This result has been evidenced already by the cases of *Bernard, supra,* (California; 24 hours); *Williams v. Ward,* 845 F.2d 374 (1988) (New York; 72 hours); *Kanekoa v. City and County of Honolulu,* 879 F.2d 607 (1989 9th Cir.) (Hawaii; no specific time period required and no per se rule adopted); and the instant case in California holding 36 hours is *the* reasonable time limit.

This court said in *Kanekoa, supra* at page 610, "The Supreme Court has not established a specific time period in which a suspect must be afforded a probable cause hearing. (Citation.) We have rejected any per se rules and have held that the time period required by the fourth amendment depends on the circumstances of each case. See *Bernard v. City of Palo Alto,* 699 F.2d 1023, 1025 (9th Cir. 1983.)" This is the position which must be adopted if the guidelines set out in *Gerstein* are properly applied. It is the unique circumstances of each case which determines whether or not the probable cause determination was made "promptly." However, California has set outside limits on what can be said to be "prompt." Penal Code sections 825, 849, 859, 859b, 991 and article I, section 14 of the California Constitution specifically address this issue.

California Penal Code section 825, which was enacted in 1872, provides, in relevant part: "The defendant must in all cases be taken before the magistrate *without unnecessary delay,* and, in any event, within two days after his arrest, excluding Sundays and holidays; . . . . " The

phrase, "and, in any event, within two days after his arrest. . . . ", was added in 1927. In *Youngblood v. Gates*, 200 Cal.App.3d 1302 (1988), the Court of Appeal held that section 825 had to be interpreted in such a way as to avoid expansion of custodial time. It held the two day period is only a limitation on *necessary* delays. The court said at page 1319, "Thus, *no unnecessary delay* is permissible between the time of arrest and presentation to a magistrate, even if that presentation takes place within two days. Accordingly, in *People v. Thompson*, 27 Cal.3d 303, 329 (1980), the court held: 'The critical factor is the necessity for any delay in arraignment. These provisions do not authorize a two-day detention in all cases. Instead, "a limit [is placed] upon what may be considered a necessary delay, and a detention of less than two days, if unreasonable under the circumstances, is in violation of the statute and of the Constitution." ' "

The focus in *Gerstein, Bernard, Kanekoa, Youngblood* and other cases dealing with the subject is whether the time period between the arrest and presentation before a magistrate was a reasonable time under the circumstances *of that case*. The statutes set an outside limit within which there is a presumption of reasonableness or appropriateness.

In *People v. Williams*, 68 Cal.App.3d 36 (1977), the Court of Appeal observed, '[t]here is no authority to delay for the purpose of investigating the case. Subject to obvious health considerations the only permissible delay between the time of arrest and bringing the accused before a magistrate is the time necessary: to complete the arrest; to book the accused; to transport the accused to court; for the district attorney to evaluate the evidence

for the limited purpose of determining what charge, if any, is to be filed; and to complete the necessary clerical and administrative tasks to prepare a formal pleading. (Citations.)" *Williams, supra*, at page 43. That statement or holding is without question in line with the letter and spirit of *Gerstein*.

California Penal Code section 849, which was added to the statutory framework in 1984 provides in relevant part: "(a) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, *without unnecessary delay*, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before such magistrate." Section 849 was before this court in *Bernard, supra*. There was no contention the *statute* was unconstitutional. There, as here, the issue was focused upon the particular *County's* policy for handling in-custody defendants. This court held that "[t]he time fixed [24 hours] was not meant to define the constitutional right. . . . The order served the important practical function of identifying the outer time limit in the vast majority of cases." *Bernard* at page 1025.

Section 849 had already set the outer time limit. The procedure in *Bernard* and in the instant case of holding evidentiary hearings in each county to determine the "outer time limits" based upon the county's geography, size, number of law enforcement agencies, etc. is not within the concept envisioned by *Gerstein*. As noted earlier, such a procedure will require no less than 58 hearings, one in each of California's counties, to determine the specific circumstances particular to that governmental

entity. *Gerstein* never envisioned such a process. It left the issue for each *state* to determine, not each separate governmental body within the state. If a county develops and implements a policy as did Santa Clara and Riverside, that policy would be subject to evaluation by a court to determine whether it is in conflict with California statutory provisions and *Gerstein*.

The process utilized by the trial court of conducting evidentiary hearings in each county is burdensome, impractical and the result obtained in the instant case of a specific time restriction raises significant equal protection questions. Those arrestees unfortunate enough to be taken into custody in a jurisdiction which can justify a 72 hour delay (the situation in *Williams v. Ward, supra*) will certainly seek to invalidate their detention on equal protection grounds resulting in additional court proceedings. However, none of this is necessary if the statutory procedures adopted in California, are constitutional under the mandates of *Gerstein*.

California Penal Code section 991 which was enacted in 1980 provides in relevant part, "(a) If the defendant is in custody at the time he appears before the magistrate for arraignment and, if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant, shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof." This section mandates an immediate probable cause determination in all cases of defendants in custody at the time of arraignment, if the defendant or his counsel so requests. Interestingly enough, this is exactly what the highest court in

this nation stated over twenty years ago was sufficient to satisfy the Fourth Amendment! Notwithstanding this clear compliance with the Supreme Court's unambiguous statement in *Gerstein*, the trial court concluded probable cause hearing must occur within 36 hours of arrest.

Calif. Constitution art. I, section 14 mandates all persons accused by felony complaint be taken *without unnecessary delay* before a magistrate. No *unnecessary* delay is permissible, even within the 2 days allowed by statute. The critical factor is the reason for the delay. A delay can be unreasonable under the circumstances even if less than 2 days. *Youngblood v. Gates, supra*. Additionally, as recognized in *Williams v. Ward, supra*, many of the arrestees dispose of their cases at arraignment although they may have sat in jail for two days awaiting transportation to the magistrate. To require a probable cause hearing prior to arraignment in such cases is certainly nonproductive and a waste of the local government's tax dollars, which is of course an additional burden on the already overburdened taxpaying public.

One of the most significant facts considered in *Gerstein*, which is not present in California, is that there was no right to a preliminary hearing if the Florida prosecutor filed an information. This is a very significant distinction in felony cases. As this court is no doubt aware, in California, a preliminary hearing serves as a probable cause hearing in felony cases. In Florida, the filing of the information foreclosed the suspect's right to a preliminary hearing. Nor could the suspect utilize habeas corpus to test the probable cause for detention under the information. There was a special statute which allowed a preliminary hearing after 30 days and arraignment which

of course would mean the suspect had been detained for a month or more before any determination of probable cause was made by a detached magistrate.

This was the foundation upon which the Supreme Court built its decision in *Gerstein*. These are not the facts in California. The petitioners in *Gerstein* sought an order giving them the right to a probable cause determination. That was a right they did not enjoy in Florida. The District Court ordered the County to give the defendants (plaintiffs in the action) an immediate preliminary hearing to determine probable cause for further detention. Subsequent state action resulted in adoption of a procedural rule in Florida which mandated every arrested person be taken before a judicial officer within 24 hours, however, that officer did *not* make a probable cause determination. The District Court held this practice was unconstitutional, a ruling we have yet to experience in California. The issue in *Gerstein* was stated by the Supreme Court to be "whether a person arrested and held for trial on an information is entitled to a judicial determination of probable cause for detention. . . . " California provides the "judicial determination of probable cause for detention" in *all* cases.

Section 859, enacted in 1872, mandates that those charged with felonies "shall, *without unnecessary delay*, be taken before a magistrate. . . . " Section 859b, enacted in 1963 sets out the time restrictions for having preliminary hearings on felony charges. The preliminary examination would be scheduled at the time defendant appears for arraignment, which would be within the two days prescribed by section 825 as discussed above and within the time frame envisioned by the court in *Gerstein*.

As can be seen from even this cursory examination of the statutory provisions in force prior to *Gerstein*, and those enacted in response to *Gerstein*, defendants in California are afforded significantly greater rights than those Floridian defendants the Supreme Court was concerned with in *Gerstein*.

Although no court, state or federal, has to date held California Penal Code sections 825, 849, 859, 859b, 991 or article I section 14 of the California Constitution to be in violation of the fourth and fourteenth amendments to the Constitution as interpreted in *Gerstein, supra*, the ruling by the district court in the instant case was tantamount to such a determination. A determination of how much time is "reasonable" to carry out the phases of the process from arrest to arraignment is a legal conclusion. It appears, however, that respondents in the instant case sought, and, at least inferentially, obtained a determination that the Riverside procedures, and presumably the California statutes, were unconstitutional within the meaning of *Gerstein*.[2]

It is one thing to conclude that the procedures adopted by a particular County in California fail to comply with the mandates of *Gerstein*, it is quite another to say the statutory provisions are unconstitutional. The trial court here considered only the local procedures adopted by Riverside. While the record may support a conclusion by the trial court that the Riverside procedures did not provide a "prompt" probable cause

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[2] It appears that a district court of three judges would be required to enjoin enforcement of a state-wide rule. See *Gerstein v. Pugh, supra*, 420 U.S. at page 109 footnote 10.

determination the trial court was not at liberty to write legislation to provide special local procedures aimed at compliance with *Gerstein* and then command its adherence by local authorities via a preliminary injunction. This is a function reserved for the legislature, not a trial court.

The trial court clearly abused its discretion by ordering probable cause determinations within a specific number of hours. It could find, if the evidence supported the conclusion, that Riverside's procedure violated the mandates of the California Constitution and the various statutory provisions which provide an incarcerated defendant with certain rights encompassed within the Fourth Amendment. It could then order Riverside to comport its procedures with those mandated by the State which provide all the protection required by *Gerstein*.

What is "prompt" will be determined by the particular circumstances of each case. Under the California statutory scheme, as interpreted by various appellate courts, and presumably approved by the Supreme Court in *Gerstein*, the outside limit for holding a probable cause hearing is 48 hours, not the 24 hours as ruled in *Bernard* nor the 36 hours ordered by the trial court here. Indeed, as noted above, even 24 hours may be found to be "unnecessary" under particular circumstances. So too 36 hours could exceed the time necessary for the appropriate administrative steps and therefore not be "prompt" within the meaning of *Gerstein*.

This honorable court knew exactly what it was doing in *Gerstein* when it did not specify a time period within which a probable cause determination must be made. It

recognized that the vast multitude of variables present in the various states due to geography, population, jail facilities, law enforcement manpower, etc. belied a specific minimum or maximum time period for conducting the probable cause hearing. That foresight should not be so eagerly disregarded by stipulations between county officials and defendants who file an action in federal court, or by federal judges who are requested to give injunctive relief to persons asserting fourth amendment violations.

California's pre-trial proceedings for arraignment and determination of probable cause incorporated into the constitution and various statutes, fully complies with the mandate of the Fourth Amendment as set forth by the Supreme Court in *Gerstein*. Compliance with that statutory scheme by petitioner Riverside County provided the respondents with all the constitutional protection expounded upon in *Gerstein*.

CONCLUSION

The trial court's order exceeded the scope of injunctive relief necessary to provide the charged defendants with their constitutional rights as mandated in *Gerstein*.

For the foregoing reasons it is clear the motion for preliminary injunction should have been denied.

DATED this 9th day of November, 1990

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OCTOBER TERM, 1990

COUNTY OF RIVERSIDE, and COIS BYRD,
SHERIFF OF RIVERSIDE COUNTY,
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Respondents.

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONERS FILED ON BEHALF OF THE DISTRICT ATTORNEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

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DONALD LEE MCLAUGHLIN, et al.,
Respondents.

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONERS FILED ON BEHALF OF THE DISTRICT ATTORNEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus respectfully submits this Brief of Amicus Curiae in support of the Brief from the petitioner on the merits. Amicus is the People of the State of California in the person of Grover C. Trask II, District Attorney for the County of Riverside, State of California. The People of the State of California are the party plaintiff in all criminal actions prosecuted in California courts. As such, the People have an interest in a criminal justice system which protects the rights of all parties concerned, yet is efficient and devoid of unnecessary and arbitrary procedures.

In the instant case, Donald Lee McLaughlin brought a class action suit on behalf of himself and other inmates detained in the Riverside County Jail prior to arraignment. The suit challenged the County's policy of arraigning inmates within 48 hours of arrest. On April 19, 1989, Judge Richard A. Gadbois of the United States District Court, Central District of California, issued a preliminary injunction requiring the County to hold a separate probable cause hearing within 36 hours of a warrantless arrest. The Ninth Circuit Court of Appeals upheld the injunction on November 8, 1989.

This issue is important to the Amicus because defendants' right to a probable cause determination within a reasonable time is already protected under Federal and State law, as well as by County procedure. The addition of this separate hearing, just 12 hours prior to arraignment, would be unnecessarily burdensome to an already overworked system. More importantly, given the number of administrative steps that must be completed prior to determining probable cause, the elimination of 12 hours of working time could mean that detainees posing a threat to the community are released — not because of a lack of probable cause, but because there simply was not enough time to process their cases.

It is for these reasons that the Amicus has a stated interest.

SUMMARY OF ARGUMENT

California and Riverside County have taken up the invitation of the Court in *Gerstein* v. *Pugh*, and integrated probable cause determinations into the process of arraignment. By so doing, Riverside has been able to provide for District Attorney review of all serious charges and attorney representation of defendants at probable

cause hearings — procedures not required by the Court in *Gerstein*. While these additional procedures and rights sometimes take 48 hours and not the 36 hours mandated by the lower courts, that added time is warranted and reasonable in light of the greater protections provided those arrested without warrants.

The lower courts' injunction requiring probable cause hearings for warrantless arrestees within 36 hours of arrest does not consider several points important in the day-to-day administration of criminal justice. In addition to the greater protection that can be afforded warrantless arrestees if the present 48-hour time limit is allowed, the lower courts do not consider the fact that some cases are complex and can require a vast array of interagency coordination. Also, a 36-hour rule is not reasonable or practical in light of the daily 24-hour schedules under which courts, in fact, operate. Lastly, as an indication of overall understandings of fairness, the California and Riverside 48-hour rule, in which probable cause hearings must be afforded to warrantless arrestees, is well within the mainstream of the practices of the other States.

FACTUAL BACKGROUND

The warrantless arrest of a person on the streets of Riverside County sets in motion a long series of steps leading to arraignment. The processing of the detainee between arrest and arraignment may be divided into six categories: (1) police functions; (2) jail functions; (3) court liaison functions; (4) district attorney functions; (5) transportation procedures; and (6) the arraignment procedures themselves. Although this process can be initiated by any one of the 16 different law enforcement agencies in Riverside County, the procedures themselves are standard throughout the area.

The pre-arraignment process begins, then, with a warrantless arrest. If the crime is serious, the officer may have to gather evidence, or call in additional officers or criminalists from the State Department of Justice to do so. Additionally, interviews and a field lineup may occur. The officer making the arrest then brings the suspect either to the Riverside County Jail (in the downtown area of the City of Riverside), the Indio Jail, or the Blythe Jail[1] Once there, the arresting officer waits for admittance into the booking area, and stays at the booking desk with the detainee until the latter is accepted for detention. (In the meantime, the officer fills out a receiving sheet, which the booking deputy subsequently reviews.)

Once the detainee is safely in the hands of the jail staff, the arresting officer leaves to fill out his arrest report.

The police report itself consists of a standard form with boxes to fill out and a narrative portion. Once the officer has finished describing the events surrounding the arrest, the report is reviewed by a sergeant on duty. If the report is incomplete or inadequate, it is referred to the officer, who adds supplemental material and returns the report to the desk sergeant. Delays may occur at this stage if the arresting officer is off-duty when the inadequacy is discovered.

Occurring simultaneously at this time is the jail's booking procedure. After the officer leaves the arrestee in the booking deputy's custody, the deputy fills out a booking

[1]Riverside is the fourth-largest County in California, and extends from within 15 miles of the coast to the Arizona border. Since crossing the breadth of the County can take four to five hours, officers take arrestees to the County jail nearest them. The Riverside Central Jail serves the Western half of the County, while Indio serves the central desert area and Blythe serves the border region near Arizona.

slip, identification package, identification wristband, property folder, money, and pink housing card. The detainee is medically screened, and is examined by the nurse on duty if there is any complaint of sickness or injury.

The detainee's personal property and money is then inventoried and sealed in a personal property bag. A receipt is issued, and the property bag is placed in a property folder and filed. Any money is forwarded to the jail's business office for safekeeping, while the property is placed in the property room. The inmate is then taken to the print room, where he is photographed and fingerprinted. He is then moved to another room for a recognizance or house arrest interview. If, after those interviews, the jail staff concludes that the inmate should be housed in jail, the inmate is taken to a dressing room, where he dons a jail jumpsuit. (His personal clothing is bagged and sent to the property room.)

The booking file, now complete, is sent to the business office. There, the clerks conduct local and federal computer checks, place the inmate's money in a cash register, complete money and status cards, color-code the file for release priority, and add the inmate's name to the court calendar.

While his file is being processed, the inmate is moved to temporary housing and is allowed to make his telephone calls. After this he is moved to permanent housing in a jail cell (or "tank").

Problems in the housing stage may occur due to the backup of pending bookings, the housing of transfers, the need for emergency transportation or hospital runs, violent or intoxicated inmates, the time needed to provide

meals, or a general facility lock-down, among other occurrences.

The next stage in the pre-arraignment process is the court liaison's function.[2] The liaison officer receives the police report and prepares the documents needed by the District Attorney's Office — namely, the complaint form and copies. The liaison official also conducts a computer check on the inmate for criminal records and/or warrants. (The check covers the Department of Motor Vehicles, Riverside County records, and California and F.B.I. files.) Once the documents and computer check are complete, the liaison officer assembles the papers into a package, makes a log entry, and hand-carries the documents over to the District Attorney's Office. He then deposits it at the front counter. Once at the District Attorney's Office, the inmate's packet is time-stamped and sent through a series of four clerks. These clerks assign the complaint to a Deputy District Attorney, check for pending cases, and start a computer file for the inmate (if one is nonexistent). They also verify the priority and in-custody data with jail officials, print out a computerized history of the inmate's prior cases, and check the information on the reports.

Once the Deputy District Attorney receives the packet, he or she reviews the complaint and exercises the District Attorney's function of approving the charges, scaling them down, or dismissing them altogether, depending upon the circumstances of the case and the existence of

[2]Each law enforcement agency has a court liaison officer. In the Sheriff's Department, the liaison officer is a sworn deputy; in police departments, the liaison is a public affairs official.

probable cause.[3] The deputy prosecutor then passes the file on to a clerk who types the complaint into the computer, generates a court copy, and attaches it to the packet. Misdemeanor and felony cases are sorted and separated. The counter clerk then time-stamps the court copy of the complaint and leaves the packet to be picked up by the court liaison officer.

The complaint and accompanying documents (computer printouts, etc.) are filed with the court by the liaison officer, who hand-carries them to the court clerk.

At this point, the paperwork for the arraignment is complete: the court will now have not only the police report, but the complaint, citations, and other documents at its disposal. Now all that remains is to either transport the inmate (if the proper court is a branch and is not in downtown Riverside) or bring him into the jail's two-way video arraignment room, where the judge has direct, live contact with the inmate and arraigns him.

If he is to be transported, the inmate is located in the jail. His identification is checked, he is searched, and then he is moved to a staging area in the jail. There, all the inmates scheduled for arraignment are chained together and taken out to a transport van. (The relevant van leaves between 6:00 and 7:30 a.m., depending on the location it is bound for. Western Riverside County has seven branch courts, each of which is 30 to 45 minutes from the downtown jail.) At court, the inmates are taken to a holding area and moved to the courtroom when called. A public defender is available to help them at that time.

[3]In 1989, 42,512 requests for filings were received by the District Attorney's Office. Of these, 29,436 were filed as complaints. (Office of the Riverside County District Attorney, 1989 Statistical Report (See Exhibit A) (1990).)

If the inmate is to be arraigned in Riverside Municipal Court and waives his right to personally appear before the judge, he can be arraigned via a live, two-way video camera pursuant to California Penal Code Section 977.2. Prior to communicating with the judge, the inmate is shown a videotape, wherein a municipal court judge explains his rights, including the procedure for determining probable cause during the arraignment process. Later, when the public defender arrives (prior to the actual arraignment), he or she asks the inmate if he understands the tape, and if he has any questions. Typically, inmates here have no questions, and the individual arraignments then proceed. At every arraignment, the defendant is asked whether he desires an immediate probable cause hearing. Virtually every defendant waives this right.

This, then, is a basic sketch of the Riverside County procedures leading to and including arraignment.

I.

RIVERSIDE COUNTY HAS TAKEN UP THE INVITATION OF *GERSTEIN* AND INTEGRATED PROBABLE CAUSE HEARINGS INTO OTHER PRETRIAL PROCEDURES WHICH HAS RESULTED IN GREATER PROTECTION OF THE RIGHTS OF WARRANTLESS ARRESTEES

Gerstein's invitation to the States to integrate the probable cause determination into other pretrial procedures has been often cited:

> "[T]he nature of the probable cause determination usually will be shaped to accord with a State's pretrial procedure viewed as a whole .... [W]e recognize the desirability of flexibility and experimentation by the States. It may be found desirable, for example, to make the probable cause determination at the suspect's first appearance before a judicial officer ... or the determination may be incorporated into the procedure for setting bail or fixing other conditions of pretrial release." (*Gerstein* v. *Pugh*, 420 U.S. 103, 124-25, 95 S.Ct. 854, 868, 43 L.Ed.2d 54 (1975).)

Gerstein's flexible approach has been affirmed as a sound one most recently by the Chief Justice writing for the majority in *Schall* v. *Martin*: "The Court in *Gerstein* indicated approval of pretrial detention procedures that supplied a probable cause hearing within five days of the initial detention." (*Schall* v. *Martin*, 467 U.S. 253, 300, fn. 28, 104 S.Ct. 2403, 2416, fn. 28, 81 L.Ed.2d 207 (1984).) The Court was citing to the A.L.I. Model Code of Pre-arraignment Procedures that are remarkably similar to those in place in Riverside County.

In *Schall*, the Court, while upholding a 72-hour detention, also indicated that there is a dialectic between the extent of the procedures offered to make the probable cause determination and the length of time the detainee may be held before the determination is made. "The brief delay in the probable cause hearing may actually work to the advantage of the [accused] since it gives his counsel usually appointed at the initial appearance ... time to prepare." (*Id.*) Within certain limits, the more procedures that are offered, the more time may pass before the probable cause determination must be made.

Recognition of this dialectic between the length of time detained and the extent of procedures offered to determine probable cause brings the Fourth Amendment cases beginning with *Gerstein* in line with their constitutional cousins, the civil procedural due process cases, such as

Matthews v. *Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Said the Court in *Matthews*:

> "The specific dictates of due process generally require consideration of three distinct factors: First, the private interest that will be affected by the official actions; second, the risk of an erroneous deprivation of such interests through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or a substitute procedural requirement would entail." (*Matthews* v. *Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18, (1976).)

In the Fourth Amendment and *Gerstein* setting, the private interest affected is that of the restraint on liberty when an individual is detained. The second factor is the probable value of additional procedures in assuring the accuracy of the probable cause determination. The final factor is the governmental burdens and costs that additional procedures would entail — though in the criminal procedure setting this factor would be of considerably less weight than in civil settings.

Certainly never may a detention be justified by a law enforcement need to develop facts establishing probable cause before the detainee is brought before a magistrate. (*Mallory* v. *United States*, 354 U.S. 44, 77 S.Ct. 1356 (1957).) It is this point, more than any other, that has caused the Court of Appeals to find lengthy detentions "unreasonable." In *Llaguno* v. *Mingey*, the Seventh Circuit found a 42-hour detention unreasonable where the police detained the owner of a car only for the purpose of trying to connect him to a killer who had used it. (*Llaguno* v. *Mingey*, 763 F.2d 1560, 1568 (7th Cir. 1985).)

Where detention is not prolonged or for an improper purpose, it is not unreasonable to delay a probable cause determination in order to afford more complete protection of the detainee's procedural rights and improve the accuracy of that probable cause determination.

The Ninth Circuit Court of Appeals has held that Riverside must provide a probable cause determination within 36 hours and not the 48 hours as has been dictated by California law, the probable cause determination being afforded at arraignment.[4] The Ninth Circuit's argument is that no more than 36 hours are needed in Riverside for the paperwork to be completed and a probable cause determination to be made. (*McLaughlin* v. *County of Riverside*, 888 F.2d 1276, 1278-79 (9th Cir. 1989); see also, *Bernard* v. *City of Palo Alto*, 699 F.2d 1023 (9th Cir. 1983) (24 hours to make probable cause determination in Santa Clara County, California, imposed).) In essence, the Ninth Circuit asserts that an after-the-fact arrest warrant must be secured as soon as police officers record on paper the particular facts supporting the arrest and bring the person to court.[5]

The Ninth Circuit fails to recognize that Riverside County affords two additional procedures to warrantless arrestees that greatly improve the accuracy of the probable cause determination. The Riverside County District

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[4]See California Penal Code Sections 825 and 991.

[5]The Ninth Circuit's opinions on warrantless arrestees have been somewhat quixotic. In *McLaughlin* and *Bernard*, the Court held that law enforcement must complete the necessary paperwork and no more before deciding probable cause. In *Kanekoa*, however, the Court found it reasonable to detain intoxicated individuals even though the paperwork was complete so that they might have an opportunity to explain their conduct. (*Kanekoa* v. *City and County of Honolulu*, 879 F.2d 607 (9th Cir. 1989).)

Attorney's Office reviews and approves all serious charges before a criminal complaint can be filed. Although, of course, this process cannot substitute for the neutral magistrate requirement of *Gerstein,* it does provide a method of eliminating frivolous or simply poor cases. As indicated in Exhibit A, over ten percent of all potential cases are eliminated by this screening process. Second, every warrantless arrestee is provided with counsel at arraignment when the probable cause hearing is afforded and has the right to put forth evidence on his or her own behalf.[6] By the language of *Gerstein* itself, these procedures are not required. (*Gerstein* v. *Pugh,* 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975).) Nevertheless, California and Riverside County provide them, though these procedures sometimes necessitate holding the hearing beyond the 36 hours mandated by the Ninth Circuit. The Ninth Circuit's 36-hour arbitrary and specific timetable for probable cause determinations is contrary to *Gerstein* and creates due process inequities for both the defendant and the People.

The Riverside County District Attorney's Office is, of course, greatly concerned with protecting the rights of defendants. Our interest, however, in maintaining district attorney review and approval of all charges and in securing a defense attorney at the probable cause determination has more practical roots.

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[6]This court has once before had occasion to note the extensiveness of procedures Riverside offers criminal defendants. In *Press-Enterprise Company* v. *Superior Court [of California for the County of Riverside],* 478 U.S. 1, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986), this court found the adversarial procedures offered a defendant in a preliminary hearing so extensive as to warrant a qualified First Amendment right of access. In that case, too, the District Attorney in Riverside filed an Amicus brief in support of the additional procedures and in support of First Amendment access to them.

The resources of the District Attorney's Office are limited. We cannot afford, given the number of attorneys and amount of criminal activity in Riverside, to let frivolous or factually weak cases make their way far through our pretrial procedures. With a complete 48-hour time period, we can provide for District Attorney review of police reports before charges are filed.[7]

In addition, with a 48-hour rule the County can provide defendants with defense attorneys at arraignment when the probable cause determination is afforded, giving the defendant an opportunity to set forth facts that might not have been included in police reports. At the District Attorney's Office we are well aware that police officers are well-versed in the rules of search and seizure and can craft their description of the facts leading up to arrest in the most favorable light possible. We favor the provision of defense attorneys at the arraignment and probable cause hearing stage so that the defendant can feel free to tell his or her side of the story and have it offered up to a magistrate as a reason why the defendant should be released. It is to be noted that time and again the Court has pointed out the efficacy of the adversarial process in uncovering truth. (*Baker* v. *Carr,* 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663 (1962).) Thus, if the County must comply with the 36-hour rule set forth in the lower courts, the County will no longer be able to provide these additional procedures.

In preparation for compliance with the District Court's order that hearings be conducted in 36 hours, procedures were designed for meeting the time limit modeled after

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[7]Under Section 825 of the California Penal Code, if the 48 hours tolls on a Sunday or court holiday, the arrestee must be brought before a magistrate in the next regular court session. This practice is in keeping with the vast majority of the states.

those in nearby Orange County (where the 36-hour time limit has not been challenged). To make the probable cause determination, the position of judicial "hearing officer" was created. This hearing officer was to stay in the jail, sit at a table and review probable cause reports written by police officers. The hearing officer, without speaking with the defendant, would then indicate on a list containing the names of all detainees whether probable cause was found. The record describes these proposed procedures in greater detail.

This process, though complying with *Gerstein* since the judicial officer is neutral, is far less effective in screening out defective charges and, therefore, in protecting arrestee's rights. What is more, the ultimate effect of removing the probable cause determination from arraignment, as is the current process, will be to slow the pre-trial procedures as a whole.

In sum, the Ninth Circuit's 36-hour rule is one that is not desirable from anyone's perspective. The District Attorney does not want it because it will greatly weaken the screening of weak cases. Defense attorneys will not want it because they will not be able to represent their clients when probable cause decisions are made. Arrestees likely will not want it because they will have no defense attorneys to speak with at probable cause hearings. If 12 more hours are allowed, the County could provide far more accurate procedures for making the probable cause determination and without the added cost of paying for judicial hearing officers.

The District Attorney's Office is well aware that 12 more hours is 12 more hours of incarceration to arrestees. With those 12 more hours, however, the County can greatly increase the accuracy of the probable cause hearing by providing the defendant with counsel, and, in the

process save the County some money. For these reasons, initiating the probable cause determination with an arraignment that is always to take place within 48 hours is, on balance, reasonable.

II.

THIRTY-SIX HOURS IS NEITHER A REALISTIC NOR PRACTICAL TIME PERIOD IN WHICH TO PROCESS ALL WARRENTLESS ARRESTEES AND PROVIDE THEM WITH PROBABLE CAUSE HEARINGS

A. Because courts operate on daily, not hourly, schedules, 36 hours is not a workable time period in which to make probable cause determinations.

Even if Riverside ceased to provide additional procedures to protect the rights of warrantless arrestees, it is not practical, nor realistic, that probable cause hearings be provided *all* warrantless arrestees within 36 hours.

California Penal Code Sections 825 and 991, and the policy of Riverside County, require that warrantless arrestees be brought before a magistrate and be provided probable cause hearings "without unreasonable delay, and, in any event within two days after his arrest. . . ." Although there is currently a conflict among the California Appellate Courts, a recent decision has indicated that the arrestee must be brought before a magistrate within two *court days* of arrest, and not the often lengthier 48 hours. (*Youngblood* v. *Gates,* 200 Cal.App.3d 1302, 246 Cal.Rptr. 775 (1988).) A person taken into custody at 8:00 p.m. on a Monday must be brought before a magistrate by Wednesday afternoon, even though 48 hours tolls at 8:00 p.m. on that Wednesday, a time when the courts are not in session.

Now apply the 36-hour plan to the 8:00 p.m. arrestee. As an initial matter, there is a problem in defining what 36 hours means in terms of *Youngblood's* "court days" interpretation — perhaps one and a half court days? Even if 36 hours are taken by their plain meaning, the 8:00 p.m. arrestee will have to be brought before a magistrate or a hearing officer within 24 hours because 36 hours will toll at 8:00 a.m., before a court is in session. This means, in turn, that all of the paperwork and procedures described in the "Factual Background" portion of this brief will have to occur during the night so that the arrestee can be prepared for arraignment on the next day.

A 36-hour rule will, as a practical matter, mean that in most cases Riverside will only have 24 hours, or less, to complete all the steps necessary before a probable cause determination must be made. It is doubtful that this is the kind of limit the District and Appellate Courts intended to impose, but that will be the practical result. While a 48-hour or even 24-hour limit might have been understandable in light of court schedules, 36 hours simply makes no sense.[8]

B. In many cases, Riverside needs 48 hours to complete procedures before a probable cause determination can be made.

As the record shows, in nearly 90 percent of all cases in Riverside the procedures needed to complete arrest reports can be completed in 24 hours or less. However, in approximately ten percent of the cases, complications may be added which will act to slow the procedures

[8]Note in Exhibit B, that of the States setting firm outer limits, all but one do so in 24-hour blocks.

described in the factual background portion of this brief.[9] For example, at a crime scene, where there has been a homicide for instance, a number of agencies in addition to the police or sheriff may respond and be required to gather evidence and file reports. The coroner will respond to examine the body before it is moved; the Criminalistics Branch of the California Department of Justice may respond to gather evidence and take samples; the F.B.I. may appear if the crime is somehow believed to have an interstate character. All of these agencies must file reports, and when they respond to a scene after a crime has been committed, their reports may be important in deciding if a person was properly arrested at the scene upon probable cause.[10] Also, many of our crimes, including the more complex ones, are drug-related. There will be probable cause to detain the individual when the effects of the narcotics, and being under the influence of them, are obvious. It may not be possible to question the individual to determine the extent of his or her involvement in the other crimes until the effects of the narcotics have worn off and the person is able to understand *Miranda* warnings.[11] In addition, in drug cases, blood and urine samples

[9]This need for extra time in certain cases is in accord with the practice of the other States. Most States would simply factor these problems into the "without unreasonable delay" calculation to expand time limits. Wyoming, for example, has a policy of requiring the probable cause determination in 24-hours. It also has a policy, however, of allowing up to 72 hours in complex felony cases.

[10]Always to be a factor in Southern California are highway travel times of the various agencies and the arrestee. If a crime occurs during or just before rush hour, movement back and forth to crime scenes can happen with painful slowness.

[11]Law enforcement will as a matter of course run "rap sheets" on an arrestee detailing any previous criminal activity. Although rap sheets are not needed to determine probable cause, they are essential

must be taken soon after the arrest and before the narcotics leave the bloodstream. For this a nurse will be required, the law enforcement agencies being concerned about their own possible civil liability when taking such samples.

These are only a few of the problems that may arise to slow particular cases and are intended only to give a flavor of the variability of procedures that may take place just after arrest.

In addition, there are systemic problems which may arise in the processing of arrestees. For instance, paperwork on a particular arrestee must be examined in three essential locations, the police or sheriff's agency, the District Attorney's Office, and the courts. In the police or sheriff's office, a desk sergeant will review reports both for completeness, and for the sufficiency of probable cause. The sergeant may delay the review of less complex cases in order to make sure all the cases are processed within 48 hours. Subsequently, in the District Attorney's Office, only a limited number of attorneys are available to review reports and approve charges. Lastly, in the courts, complaints are divided along the lines of misdemeanors and felonies in order to assure that the most experienced judges examine the more serious cases. It would be faster to not make these distinctions between charges, but the presence of these self-imposed bottlenecks is to the defendant's advantage.

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to arraignment and bail determinations. Someone arrested for child neglect is viewed very differently if they have a long history of violent crime, for example.

C. The lower court's geographic case-by-case determination of probable cause hearing time limits will "balkanize" Riverside County according to the detainee processing times of each of its jails.

In the lower court's *McLaughlin* decision, the Ninth Circuit noted that the District Court had limited the application of the 36-hour time limit to Riverside County's Central Jail. In other jails in the County it indicated that time limits might be greater or less than 36 hours. It is to be noted that in *Bernard* v. *City of Palo Alto,* the Ninth Circuit upheld a 24-hour limit in Santa Clara County, California. (*McLaughlin* v. *County of Riverside,* 888 F.2d 1276, 1278-79 (9th Cir. 1989).)

If the Federal Courts continue on their present path, each of the Counties in California and ultimately each of the States over which the Ninth Circuit has jurisdiction will be broken up into smaller units with respect to warrantless arrestee detention limits that would center around each of the jails in the Counties and States. Ultimately, if this kind of "balkanization" continues, some absurdities could result. When determining whether an arrestee was held too long before a probable cause determination was made, argument could center on which side of the street a person had been arrested, where the street marked the boundary of the limits of jails to which a detainee should be taken.

California law sets a uniform 48-hour time limit for warrantless detentions that, of course, applies statewide. The single uniform application of a law is a far sounder approach than the jail-by-jail approach the Ninth Circuit appears to be taking. Though some jails may be able to process detainees somewhat faster than others, the difference is slight and a uniform time period will avoid the

confusion — and possible equal protection problems — that might result from the Ninth Circuit's approach.

III.

RIVERSIDE'S PROCEDURES AND TIME LIMITS WITH REGARD TO WARRANTLESS ARRESTEES ARE WELL WITHIN THE MAINSTREAM OF THE PROCEDURES AND TIME LIMITS FOLLOWED BY THE OTHER STATES

The fact that a practice is widely followed by a large number of States is not, of course, conclusive in determining whether the practice is within the bounds of due process or the Fourth Amendment. The Court has noted, however, that it is plainly worth considering the practices of the other States to determine whether the practice "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." (*Leland* v. *Oregon*, 343 U.S. 790, 798, 72 S.Ct. 1002, 1007, 96 L.Ed. 1302 (1952).)

The attached Exhibit B describes the practices of the other States with regard to warrantless arrestees and shows that California's practices are well within the mainstream of the practices of the other States. A few important facts should be noted.

First, a majority of the States set no outer time limit by which a probable cause determination for warrantless arrestees must be made. Rather, they follow the federal practice of requiring presentation to a magistrate "without unnecessary delay." Nearly two dozen States do, however, have firm outside time limits written directly into their statutes. Twenty-four hours is common, but greater time limits are also found. Nevada set 72 hours as the outside time limit, as does Louisiana and Indiana;

North Carolina has 96 hours; and Georgia, Hawaii, and Rhode Island, have 48 hours. It is worth noting that States with short time limits, Missouri with 20 hours and Oregon with 36 hours might be termed low volume crime areas. In New York City — certainly one of the highest crime areas in the Nation — the Second Circuit in *Williams* v. *Ward* permits up to 72 hours before the probable cause determination is made. (*Williams* v. *Ward*, 845 F.2d 374 (2nd Cir. 1988).) In addition, geographic problems may expand outside time limits. In many states with rural counties it is not uncommon for a suspect to remain in jail for as much as a week before a judge arrives.

Second, California is in line with the overwhelming majority of States in combining the probable cause to detain determination with arraignment or arraignment-like procedures. Only a bare handful of the States make the probable cause to detain determination a separate stage of the proceedings.

Third, California and Riverside County are unique in providing adversarial procedures for the probable cause determination within a rigid time period in which the determination must be made. Other States which provide adversarial procedures use the "without unreasonable delay" language and leave the period in which the determination must be made undetermined.

CONCLUSION

The Riverside County District Attorney has a duty to assure that the criminal justice system, within the County, operates fairly and effectively. In furtherance of this duty, the Riverside County District Attorney submits this Brief of Amicus Curiae in support of the petitioner, Riverside County. The Amicus, as the representative of

the People of California, respectfully requests this Court reverse the decision of the Ninth Circuit Court of Appeal.

The State of California and Riverside County have taken up the invitation of this court in *Gerstein* v. *Pugh* and integrated probable cause determinations into the arraignment process, which is always to occur within 48 hours. With this amount of time, the County is able to assure warrantless arrestees the representation of counsel at arraignment when probable cause hearings are afforded and provide for District Attorney approval of all charges before they are filed in order to eliminate frivolous or factually weak cases. These additional protections make a 48-hour detention time reasonable.

Respectfully submitted,

GROVER C. TRASK II
District Attorney
County of Riverside

EXHIBIT A

EXHIBIT A

FELONY STATISTICAL INFORMATION
RIVERSIDE COUNTY DISTRICT ATTORNEY'S OFFICE
Month of December, 1989

	Riverside Division		Cumulative Total	
Felonies:	1989	1988	FY 89-90	Cal. Yr. 89
Requested	1,076	959	6,618	12,608
Filed	548	405	3,190	5,155
17b	195	428	801	1,836
Rejected	78	133	577	1,051
Informations Filed	64	108	584	1,161
17b Reduction @ Prelim	110	87	450	797
Dismissals @ Prelim	24	48	173	396
Dism Refiled as Felonies	4	6	24	71
Pending Homicides	49	42	N/A	N/A
Violation of Probation	0	2	42	50
State Prison Commitments	106	87	804	1,533

	Desert Division		Cumulative Total	
Felonies:	1989	1988	FY 89-90	Cal. Yr. 89
Requested	395	439	2,326	4,976
Filed	159	152	961	1,969
17b	50	34	298	722
Rejected	137	173	806	1,711
Informations Filed	27	20	165	343
17b Reduction @ Prelim	11	14	62	156
Dismissals @ Prelim	9	17	72	152
Dism Refiled as Felonies	2	4	9	25
Pending Homicides	13	13	N/A	N/A
Violation of Probation	3	0	6	6
State Prison Commitments	48	29	292	517

Felonies:	County Totals 1989	1988	% 89 to 88	Cumulative Total FY 89-90	Cal. Yr. 89
Requested	1,471	1,398	5%	8,944	17,584
Filed	707	557	27%	4,151	7,124
17b	245	462	−47%	1,099	2,558
Rejected	215	306	−30%	1,383	2,762
Informations Filed	91	128	−29%	749	1,504
17b Reduction @ Prelim	121	101	20%	512	953
Dismissals @ Prelim	33	65	−49%	245	548
Dism Refiled as Felonies	6	10	−40%	33	96
Pending Homicides	62	55	13%	N/A	N/A
Violation of Probation	3	2	50%	48	56
State Prison Commitments	154	116	33%	1,096	2,050

Felony Trials Completed:	Riverside Division G	NG	H
a) Original Plea Guilty (859 PC)	159	N/A	N/A
b) Change Plea, Sup Ct	54	N/A	N/A
c) Trials: Jury	11	1	0
Court	0	0	N/A
Totals: a,b,c	224	1	0

Felony Trials Completed:	Desert Division G	NG	H
a) Original Plea Guilty (859 PC)	64	N/A	N/A
b) Change Plea, Sup Ct	2	N/A	N/A
c) Trials: Jury	0	1	0
Court	0	0	N/A
Totals: a,b,c	66	1	0

Felony Trials Completed:	County Totals G	NG	H
a) Original Plea Guilty (859 PC)	223	N/A	N/A
b) Change Plea, Sup Ct	56	N/A	N/A
c) Trials: Jury	11	2	0
Court	0	0	N/A
Totals: a,b,c	290	2	0

Felony Trials Completed:	Cumulative Total FY 89-90 G	NG	H	Cal Yr. 1989 G	NG	H
a) Original Plea Guilty (859 PC)	1,365	N/A	N/A	2,340	N/A	N/A
b) Change Plea, Sup Ct	479	N/A	N/A	1,118	N/A	N/A
c) Trials: Jury	61	8	6	134	22	13
Court	4	0	N/A	8	0	N/A
Totals: a,b,c	1,909	8	6	3,600	22	13

EXHIBIT A

MISDEMEANOR STATISTICAL INFORMATION RIVERSIDE COUNTY DISTRICT ATTORNEY'S OFFICE Month of December, 1989

	Riverside Division			
			Cumulative Total	
	1989	1988	FY 89-90	Cal Yr 1989
Misdemeanors:				
Requested	1,173	1,375	8,265	16,258
Filed	900	1,162	5,854	10,121
Rejected	112	205	868	1,602
Violation of Probation	36	60	235	437
Case Dismissals	91	98	613	1,382

	Desert Division			
			Cumulative Total	
	1989	1988	FY 89-90	Cal Yr 1989
Misdemeanors:				
Requested	788	616	3,864	8,670
Filed	707	517	3,159	7,080
Rejected	130	145	980	2,079
Violation of Probation	25	37	135	432
Case Dismissals	36	59	359	807

	County Totals				
				Cumulative Total	
	1989	1988	% 89 to 88	FY 89-90	Cal Yr 1989
Misdemeanors:					
Requested	1,961	1,991	−2%	12,129	24,928
Filed	1,607	1,679	−4%	9,013	17,201
Rejected	242	350	−31%	1,848	3,681
Violation of Probation	61	97	−37%	370	869
Case Dismissals	127	157	−19%	972	2,189

	Riverside Division		
	G	NG	H
Misdemeanor Trials Completed:			
a. IRC Plea	703	N/A	N/A
b. Trials: Jury	10	2	0
Court	0	0	N/A
Totals:	713	2	0

	Desert Division		
	G	NG	H
Misdemeanor Trials Completed:			
a. IRC Plea	370	N/A	N/A
b. Trials: Jury	3	0	0
Court	0	0	N/A
Totals:	373	0	0

	County Totals		
	G	NG	H
Misdemeanor Trials Completed:			
a. IRC Plea	1,073	N/A	N/A
b. Trials: Jury	13	2	0
Court	0	0	N/A
Totals:	1,086	2	0

	Cumulative Totals					
	FY Yr 89-90			Cal Yr 1989		
	G	NG	H	G	NG	H
Misdemeanor Trials Completed:						
a. IRC Plea	6,986	N/A	N/A	13,200	N/A	N/A
b. Trials: Jury	74	17	11	169	42	0
Court	14	1	N/A	43	6	N/A
Totals:	7,074	18	11	13,412	14	0

EXHIBIT B

EXHIBIT B

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Alabama	(Alabama always proceeds on indictment. For misd., no detention for warrantless arrests)	N/A	N/A

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unccodified Policy
N/A	N/A	N/A

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Alaska	Alaska Stat. Sections 12.25.150(a), 12.30.020(a) (1990) Alaska Rules of Ct.-Crim Rules, Rules 5(e)(1), 53 (1990)	24 hours including Sundays and holidays, except if "strict adherance" to [Rules] will work injustice" (See Rule 53)	Yes (See 12.30.020(a))

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unccodified Policy
No	N/A	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Arizona	Arizona Rev. Stat. Ann. Vol. 17, Rules 4.1, 4.2 (1987)	24 hours	Yes Judge reads release questionnare (See Comment, p.25)

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unco dified Policy
No (See Comment p.25)	N/A	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Arkansas	Arkansas Stat. Ann. Ct. Rules, Rules 8.1, 8.3 (1990)	No unnecessary delay	Yes (Rules 8.3)

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Reasonable - no particular time limit. Statewide policy

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Colorado	Colorado Rev. Stat. Vol. 7B, Ct. Rules, Rule 5 (1984)	No unnecessary delay	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	Yes (Rule 5(a)(4)) State or defendant may make demand within 10 days	Morning after arrest; no more than 72 hours

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Connecticut	Connecticut P.B. Sections 635, 650, 651 (1990)	Next day ct. in session; if continuance requested, second ct. day. (See Sec. 651)	Yes (Conn. P.B. Section 650)

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as practice book

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Delaware	Delaware Code Ann., Rules — Sup. Ct., Rule 5 (1975)	No unnecessary delay	Yes (Rule 5(a))

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Reasonableness; try to be within 24 hours

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
District of Columbia	D.C. Code Ann. Sections 23-562(c)(1), 23-1322 (1989)	No unnecessary delay	Yes Unless state moves for continuance (not more than 5 days) (Rule 23-1322(c)(3))

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Arraignment within 24 hours prob. cause hearing at arraignment Mon.-Sat. arraignments

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined at Initial Hearing?
Florida	Florida Stat. Ann. Vol. 33 Rules of Crim. Proc., Rules 3.132, 3-133 (1989)	24 hours	Yes (See Rules 3.132(a), (b); 3.133(a)(1))

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as ct. rules

State	Statute/Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined at Initial Hearing?
Georgia	Georgia Code Ann. Section 27-212 (1988)	48 hours	Yes Magistrate receives/examines affidavit

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined at Initial Hearing?
Hawaii	Hawaii Rev. Stat. Section 803-9(5) (1985) Hawaii Rules of Crim. Proc., Rule 5 (199)	48 hours (*See also Kanekoa v. City and County of Honolulu*, 879 F.2d 607 (9th Cir. 1989))	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Yes At prelim	Yes within 48 hours (See Rule 5)	*Kanekoa*: hold only for admin. purposes. Policy: 'round the clock charging by D.A.'s

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined at Initial Hearing?
Idaho	Idaho Code Crim. Rules Rule 4(e), 5(b), (c) (1987)	24 hours, excluding weekends and holidays	Yes (Rule 5(e))

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code; rumblings of rule change to 48 hours. Note: if arrested after 6:30 a.m. cutoff, will be seen on afternoon of next day — more than 24 hours

State	Statute/Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Illinois	Illinois Ann. Stat. Ch. 38, para. 109-1 (Smith-Hurd 1980)	No unnecessary delay	Yes (Para. 109-1(b)(3)) (See Comment pp. 244-45)

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Can be	N/A	Reasonableness

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Indiana	Indiana Code Ann. Sections 35-33-7-1, 35-33-7-2, 35-33-7-3 (Burns, 1985)	Taken promptly; up to 72 hours (Rule 35-33-7-3)	Yes Affidavit (Rule 35-33-7-2)

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Typically, the same day. If arrested too late, next day.

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Iowa	Iowa Rules Crim. Proc. Rules 1(c), 2(1) (1990)	24 hours, including weekends	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Kansas	Kansas Stat. Ann. Section 22-2901 (1988)	No unnecessary delay	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	24 hours

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Kentucky	Ky. Rev. Stat. Ann., Rules of Crim. Proc., RCr. 3.02 (Baldwin 1988)	No unnecessary delay	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	ASAP to magistrate; includes weekend arraignments

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Louisiana	Louisiana Rev. Stat. Ann., Code of Crim. Proc. Vol. 1, Art. 230.1 (West Cum. Supp. 1990)	72 hours, weekends and holidays excluded	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Yes	Yes (Section 292 - defendant or state may request hearing)	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Maine	Maine Rules of Crim. Proc. Rule 5(a) (1989)	48 hours	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Maryland	Maryland Rules Ann. Rule 4-212(f) (1990)	24 hours	Yes Warrant lodged with court and examined as a detainer

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Weekends excluded

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Massachusetts	Mass. Gen. Laws Ann., Rules of Crim. Proc., Rule 7(a) (West 1980)	Day of arrest or next day	Yes Judge receives affidavit

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Weekends excluded

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Michigan	Michigan Stat. Ann. Rules 2, Rule 6.104(D) (Callaghan 1990)	(No time requirement)	Yes Complaint received at initial hearing for prob. cause

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Arraignment without unnecessary delay, usually within 24 hours

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Minnesota	Minnesota Stat. Ann., Rules of Crim. Proc., Rule 4.02, (Subd. 5) (West 1979) (See also Comment, Rule 4, pp. 15-16)	36 hours, not including day of arrest, Sundays or holidays	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Time starts at midnight of day of arrest

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Mississippi	Miss. Code Ann. Section 99-3-17 (1973)	No unnecessary delay	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
No	N/A	24 hours, except weekends, or if judge unavailable

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Missouri	Missouri Rules of Ct., Rules 21.11, 22.06 (West 1990)	20 hours	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
No	N/A	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Montana	Montana Code Ann. Section 46-7-102 (1988)	Without unreasonable delay	No Initial appearance is arraignment only

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
N/A	Yes Afforded both felonies and misdemeanors	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Nebraska	Nebraska Rev. Stat. Section 29-504 (1989)	As soon as may be possible	Varies: sometimes at initial app., sometimes after arraignment

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
Yes, if requested	The prob. cause to arrest hearing and prelim on charges are combined	In rural counties, judges circulate. Is possible an arrestee may be held for a week before judge arrives to determine prob. cause or arraign.

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Nevada	Nevada Rev. Stat. Section 171.178 (1987)	72 hours, excluding weekends and holidays	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
N/A	Yes Afforded both suspected felonies and misdemeanors	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
New Hampshire	N.H. Rev. Stat. Ann. Section 594:20-a (1955)	24 hours	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
No	Indictment is by Grand Jury	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
New Jersey	N.J. Ct. Rules Rule 3:4-3 (1990)	Reasonable time	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
Yes	N/A	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
New Mexico	N.M. Stat. Ann., Code of Crim. Proc. Section 7-203 (1978)	24 hours, except Sat., Sun., holidays; never to exceed 72 hours	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
No	N/A	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
New York	N.Y. Crim. Proc. Law Section 140.20 (1984)	Without unnecessary delay. *Williams v. Ward*, 845 F.2d 374 (2nd Cir. 1988) interprets as three days	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
No	N/A	Prob. cause determination currently being made within 24-36 hours

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
North Carolina	N.C. Gen. Stat. Sections 15A-511 15A-501, 15A-601 (1989)	Not to exceed 96 hours	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
N/A	Yes At first appearance prob. cause hearing set within 15 working days	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
North Dakota	N.D. Cent. Code Section 29-06-25 (1960)	Without unnecessary delay	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unrodified Policy
N/A	Yes Set within a reasonable time	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Ohio	Ohio Rev. Code Ann., Rules of Crim. Proc., Rule 4(E)(2) (Baldwin 1989)	Without unnecessary delay	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unrodified Policy
N/A	Yes Prelim provided for felony suspects. Must be scheduled within 15 days	24 hours

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Oklahoma	Oklahoma Stat. Ann. Sections 22-181, 22-251 (West 1969)	Without unnecessary delay	Yes (felonies only)

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unrodified Policy
The magistrate examines the accused under oath and examines complaint with any affidavits	Initial Hearing is the prelim	48 hours

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Oregon	Oregon Rev. Stat. Sections 133.805, 135.010, 135.070 (1989)	36 hours, excluding weekends and holidays; never to exceed 96 hours	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unrodified Policy
N/A	Yes Not to exceed five days from date of arraignment (felonies only)	No prelims in most counties — Grand Jury indictments are the norm.

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Pennsylvania	Penn. Rules of Crim. Proc. Rules 130, 140 (West 1989)	Without unnecessary delay	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Puerto Rico *(see end)			

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Rhode Island	Rhode Island Ct. Rules, Sup. Ct. Rules of Crim. Proc. Rule 5 (1990)	48 hours, excluding holidays & weekends	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
South Carolina *(see end)			

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
South Dakota	So. Dakota Codified Laws Ann., Section 23A-4-1 (1988)	Without unnecessary delay	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
N/A	Yes (for all felonies and some misd. suspects)	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Tennessee	Tenn. Code Ann. Section 40-5-103 (1982)	Without unnecessary delay	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Magistrate examines officer and defendant	N/A	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Texas	Texas Code of Crim. Proc. Section 14.06 (1989)	Without unnecessary delay	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Felonies: adversarial hearing may be requested. Misd. complaint and affidavits examined	N/A	24 hours, excluding weekends & holidays

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Utah	Utah Code Ann., Code of Crim. Proc. Section 77-7-23 (1990)	Without unnecessary delay	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
N/A	Yes	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Vermont	Vermont Stat. Ann., Rules of Crim. Proc. Rule 3(b) (1983)	Without unnecessary delay	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Left to discretion of ct. whether witnesses may be examined	Yes	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Virginia	Virginia Code Ann., Sections 19.2-81, 19.2-82 (1986)	Brought forthwith	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
U.S. Virgin Islands	V.I. Code Ann. Section 14-305-3562 (1988)	Reasonable time	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	Yes	Initial appearance must be within 3 days

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Washington	Washington Rev. Code Ann., Sup. Ct. Crim. Rules, Rule 3.2.1(a)(1) (1990)	24 hours, not including weekends & holidays	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
West Virginia	W. Va. Code, Rules of Crim. Proc. Rule 62-1-5 (1989)	Without unnecessary delay. Judges circulate in rural areas and suspects may be held for up to a week	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Prob. cause determined by examining face of complaint. For citizen complaints, ct. may ask for police investigation	Yes	Old rule that suspect could not be incarcerated without prob. cause determination. This has only recently changed

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Wisconsin	Wisconsin Stat. Section 970.01 (1989)	Reasonable time	Yes (But not for suspected misdemeanants)

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Yes For felony suspects	N/A	May be held up to four days

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Wyoming	Wyoming Stat., Rules of Crim. Proc., Rule 5 (1978)	Without unnecessary delay	Defendant informed of rights, of charges, and bail set. No clear prob. cause determination made.

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
N/A	Yes For felony suspects	For complex cases, defendants often held up to 72 hours

* Unable to obtain reliable information for South Carolina and Puerto Rico.

STATUTORY vs. UNOFFICIAL POLICY: HOURS BEFORE INITIAL APPEARANCE

Statutory Rule Hours Before Initial Hearing	No. of States/ Territories	Unofficial Policy Hours Before Initial Hearing	No. of States/ Territories
20	1	20	1
24	11	24	19
36	2	36	3
48	4	48	5
72	3	72	5
96	1	96	2
No unnec. delay	26	No unnec. delay	14
No time requirement	2	No time requirement	1
	50		50

NOTE: No reliable data for South Carolina and Puerto Rico. Count includes the District of Columbia and the Virgin Islands

No. 89-1817

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term 1990

COUNTY OF RIVERSIDE and COIS BYRD,
SHERIFF OF RIVERSIDE COUNTY,

Petitioners,

vs.

DONALD LEE McLAUGHLIN, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF AMICI CURIAE OF THE STATES OF HAWAII, ALABAMA, ARKANSAS, CONNECTICUT, DELAWARE, IDAHO, ILLINOIS, INDIANA, MAINE, MICHIGAN, MISSISSIPPI, MONTANA, NEBRASKA, NEW JERSEY, NEW HAMPSHIRE, NEW MEXICO, NEVADA, NORTH CAROLINA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, VERMONT, and WYOMING IN SUPPORT OF PETITIONERS

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BRIEF AMICI CURIAE OF THE STATES OF HAWAII, ALABAMA, ARKANSAS, CONNECTICUT, DELAWARE, IDAHO, ILLINOIS, INDIANA, MAINE, MICHIGAN, MISSISSIPPI, MONTANA, NEBRASKA, NEW JERSEY, NEW HAMPSHIRE, NEW MEXICO, NEVADA, NORTH CAROLINA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, VERMONT, and WYOMING IN SUPPORT OF PETITIONERS

The amici States enumerated above, by their respective Attorneys General, or chief legal officers, submit this brief in support of reversal of the judgment of the United

States Court of Appeals for the Ninth Circuit entered in the proceeding below on November 8, 1989.*

INTEREST OF THE AMICI CURIAE

The amici States, like all States, administer criminal justice systems, and have a vital and ongoing interest in the resolution of the important issues presented by Riverside County, California's efforts to overturn the federal injunction entered below requiring that the judicial probable cause hearing mandated in cases of warrantless arrests by *Gerstein v. Pugh*, 420 U.S. 103 (1975), be initiated a day-and-a-half after arrest regardless of procedures state law otherwise provides. Amici, like Petitioners, submit the United States Court of Appeals erred on two broad fronts in sustaining the preliminary injunction entered below, first in creating a "class-action" exception to this Court's decision in *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), and, second, in fundamentally misconstruing the nature of the Fourth Amendment right conferred by *Gerstein*.

If not reversed by this Court, the decision below will have substantial effects upon the functioning of the criminal justice systems in the States, as well as in the federal Government. In addition to California, at least a dozen States[1] explicitly authorize, depending upon the facts,

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* The State of Maine joins only in the argument in Part "B" of this Brief and in the accompanying part of the conclusion.

[1] *See* Ga. Code Ann. § 27-212 (1988) (48 hours); Haw. Rev. Stat. § 803-9(5) (1985) (48 hours (but see Haw. R. Penal P. 5(a) (presentment must occur "without delay")); Idaho Code Crim. R. 5(b) and (c) (1987) (24 hours excluding weekends and holidays); La. Rev. Stat. Ann., 1 Code of Crim. Proc. Art. 230.1

(Continued on following page)

detention of persons arrested on the basis of "a policeman's on-the-scene assessment of probable cause" for periods that exceed the thirty-six hour maximum period allowed by the Court of Appeals prior to the time a magistrate must constitutionally evaluate the officer's probable cause determination. At least twenty-five other States, territories or possessions of the United States appear to implicitly authorize a detention exceeding thirty-six hours.[2] Although Federal Rule of Criminal

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(Continued from previous page)

(West Cum. Supp. 1990) (72 hours, weekends and holidays excluded); Maine R. Crim. Proc. 5(a) (1989) (48 hours); Mass. Gen. L. Ann., Crim. P. R. 7(a) (West 1990) (next day (weekends excluded)); Minn. Stat. Ann., Crim. P. R. 4.02 (36 hours, Sundays and holidays excluded); Nev. Rev. Stat. § 171.178 (1987) (72 hours, excluding weekends and holidays); N.M. Stat. Ann., Crim. P. § 7-203 (1978) (24-72 hours, weekends and holidays excluded); N.C. Gen. Stat. § 15A-511, 15A-601 (1989) (not to exceed 96 hours); Or. Rev. Stat. §§ 133.805, 135.010, 135.070 (1989) (36 hours, excluding weekends and holidays); R.I. Sup. Ct. R. Crim. P. 5 (1990) (48 hours excluding holidays and weekends); Wash. Rev. Code Ann., Sup. Ct. Crim. R. 3.2.1(a)(1) (24 hours after arrest not including weekends and holidays).

[2] Ark. Stat. Ann. Ct. R. 8.1, 8.3 (1990) (no unnecessary delay); 7b Colo. Rev. Stat. Ct. R. 5 (1984) (same); Connecticut P.B. §§ 635, 650 (1990) (next day court is in session); Del. Code Ann. Sup. Ct. R. 5 (1975) (no unnecessary delay); D.C. Code Ann. §§ 23.562(c)(1), 23-1322 (1989) (same); Ill. Ann. Stat. Ch. 38, 109-1 (Smith-Hurd 1980) (same); Ind. Code Ann. §§ 35-33-7-1, 35-33-7-2, 35-33-7-3 (Burns 1985) (prompt presentment (up to 72 hours after arrest)); Kansas Stat. Ann. § 22-2901 (1988) (no unnecessary delay); Ky. Rev. Stat. Ann., Crim. Proc. R. 3.02 (Baldwin 1988) (same); Mich. Stat. Ann., R. 2, 6.104 (D) (Callaghan 1990) (no time requirement); Miss. Code Ann. § 99-3-17 (1973) (no unnecessary delay); Mont. Code Ann. § 46-7-102 (1988) (no unreasonable delay); Neb. Rev. Stat.

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Procedure 5(a) requires that a detainee be brought to a magistrate "without unnecessary delay," the strict day-and-a-half rule endorsed by the Ninth Circuit would severely truncate the discretion entrusted to the United States as well.

To be sure, police officials and prosecuting authorities in the amici States are under substantial obligations by reason of the familiar rule that a State "must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." *Gerstein*, 420 U.S. at 125 (footnote omitted).

As laws cited in *Gerstein* with approval fifteen years ago make clear, and as this Court confirmed in 1984, "[t]he Court in *Gerstein* indicated approval of pretrial detention procedures that supplied a probable-cause hearing within five days of the initial detention." *Schall v. Martin*, 467 U.S. 253, 277 n. 28 (1984). The amici States submit that, in not only departing from this statement of

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§ 29-504 (1989) (as soon as may be possible); N.J. Ct. R. 3:4-3 (1990) (reasonable time); N.Y. Crim. Proc. L. § 140-20 (1984) (without unnecessary delay); N.D. Cent. Code § 29-06-25 (1960) (same); Ohio Rev. Code Ann., R. Crim. P. 4(E)(2) (Baldwin 1989) (same); Okla. Stat. Ann. § 22-181, 22-251 (West 1969) (same); S.D. Codified L. Ann. § 23A-4-1 (1988) (same); Tenn. Code Ann. § 40-5-103 (1982) (same); Texas Code of Crim. P. § 14-06 (1989) (same); Utah Code Ann., Code of Crim. P. § 77-7-23 (1990); Vt. Stat. Ann., Crim. P. R. 3(b) (1983) (same); V.I. Code Ann. §§ 14-3-5-3562 (1988) (reasonable time); W. Va. Code, Crim. P. R. 62-1-5 (1989) (without unnecessary delay); Wis. Stat. § 970.01 (1989) (reasonable time); Wyo. Stat., Crim. P. R. 5 (1978) (without unnecessary delay).

the Constitution's requirements, but in erecting a super-habeas classwide injunctive remedy that departs from the teachings of *City of Los Angeles v. Lyons*, *supra*, the Court of Appeals and the District Court have fundamentally intruded upon the States' prerogatives in the war on crime. Indeed, in abolishing the States' discretion to provide meaningful probable cause hearings, with substantial additional procedural protections, after the day-and-a-half window has closed, the judgment below seriously disserves the interests of arrestees as well. *See FDIC v. Mallen*, 486 U.S. 230 (1988).

For these basic reasons, as elaborated below, the amici States urge the Court to vacate the judgment below and remand with instructions to dismiss the complaints for injunctive relief for want of jurisdiction, or to reverse the judgment below.

ARGUMENT

A. The Court of Appeals Erred in Concluding that Article III "Case or Controversy" Requirements Are Satisfied by a Class's "Shared" Article III Standing.

Under this Court's decision in *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), the named plaintiffs in this case plainly lacked Article III standing to obtain a federal injunctive remedy of any sort when the preliminary injunction was entered by the District Court twenty months after the complaint in this action was filed. *See* Pet. at 6, 9. In reasoning that the named plaintiffs permanently *"have* standing" because they "were actually suffering the harm for which they *sought* injunctive relief"

"at the time they *filed* their complaint" (888 F.2d at 1277), the Court of Appeals committed fundamental error, and the judgment should be vacated and remanded with instructions to dismiss the complaints for want of jurisdiction. *See generally Bender v. Williamsport Area School District*, 475 U.S. 534, 541 (1986).

Contrary to the reasoning of the Court of Appeals, this Court's decision in *Lyons* does not turn upon whether the alleged police misconduct persists long-enough for a federal complaint to be filed. Indeed, this Court has repeatedly reaffirmed that the "case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate." *Lewis v. Continental Bank Corp.*, 110 S. Ct. 1249, 1253 (1990).

Rather, the reasoning of *Lyons*, as Justice Brennan wrote for the Court in *Honig v. Doe*, 484 U.S. 305 (1988), is that "for purposes of assessing the likelihood that state authorities will reinflict a given injury, we generally have been unwilling to assume that the party seeking relief will repeat the type of misconduct that would once again place him or her at risk of that injury." *Id.* at 320. Indeed, in *Lyons* itself, the Court was extremely careful to focus upon the circumstances when judgment was entered in the District Court. *See* 461 U.S at 99, 110.

The fact that the case was not *moot* did *not* affect the conclusion that Lyons lacked standing when the preliminary injunction motion was heard. *See id.* at 101, 105-106.[3]

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[3] It is noteworthy that in the related litigation of *Kanekoa v. City and County of Honolulu*, 879 F.2d 607 (9th Cir. 1989), the

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And it likewise can make no difference that, in this case, a class is named and certified, for the requirements of Article III standing, like statutory jurisdictional requirements, apply to each member of the class, just as if they were named members of the class. *See Zahn v. International Paper Co.*, 414 U.S. 291 (1973); *Sosna v. Iowa*, 419 U.S. 393, 402 (1975).

Amici nonetheless recognize that in *Gerstein v. Pugh*, 420 U.S. 103 (1975), and, more importantly, in *Schall v. Martin*, 467 U.S. 253 (1984), decided after *Lyons*, this Court failed to apply a *Lyons* analysis to class claims for injunctions against pretrial detention on the view that the plaintiff "could nonetheless suffer repeated deprivations, and it is certain that other persons similarly situated will be detained under the allegedly unconstitutional procedures." *Gerstein*, 420 U.S. at 110 n.11; *see Schall*, 467 U.S. at 256 n.3 (quoting *Gerstein*). Amici nonetheless submit that the rule of *Lyons* should properly control this case, and the judgment should be reversed for want of a "case" or "controversy" as to the claims for equitable relief.

First, as a simple matter of precedent, neither *Gerstein* nor *Schall* address precisely the Article III difficulty presented by the floating injunction entered by the District Court. In both *Gerstein* and *Schall*, the Court's statements sustaining its Article III jurisdiction were addressed to mootness, not standing. Here, as in *Lyons*, "[t]he equitable doctrine that cessation of the challenged conduct does not

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District Judge who sat on the *Lyons* case refused to order injunctive relief despite his belief that the policy of the City and County of Honolulu grossly violated *Gerstein*'s command. *See* Pet. App. 31, *Kanekoa v. City and County of Honolulu, Douglas G. Gibb, and the State of Hawaii*, No. 90-5392 (U.S. May 22, 1990).

bar an injunction is of little help in this respect, for Lyons' lack of standing does not rest on the termination of the police practice but on the speculative nature of his claim that he will again experience injury as the result of that practice even if continued." 461 U.S. at 109. To the extent *Schall* overlooks any *Lyons* defect in Gregory Martin's challenge to New York's juvenile preventive detention procedures, *Schall* can be properly characterized as a case where jurisdictional error, not presented by New York's appeal, was overlooked as the Court went on to reverse on the merits. *Compare Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1, 27-30 (1981), *with Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 106-17 (1984), *and id.* at 165 n. 49 (Stevens, J., joined by Brennan, Marshall, and Blackmun, JJ.).

Second, the application of *Lyons* to this case is dictated by the principles and policies that animate this Court's more recent Article III jurisprudence. As this Court suggested in *Honig v. Doe*, 484 U.S. 305 (1988), *Lyons* may be held inapplicable to cases of transitory harm if, and only if, the plaintiff, by specific factual proof, has overcome the Court's reluctance "to assume that the party seeking relief will repeat the type of misconduct that would once again place him or her at risk of that injury." *Id.* at 320. No such proof exists in the record of this case. This is simply not a case involving "the misconduct of an emotionally disturbed or otherwise disabled child who has not yet reached adolescence." *Id.* at 322. This reading of *Lyons* accords with this Court's strict reading of standing requirements, and the flat prohibition on the sort of "circular promenade" indulged by the lower courts' transposition of the plaintiffs' standing at

the start of the case to the situation that existed when the District Court entered equitable relief. *Compare Lujan v. National Wildlife Foundation*, 110 S. Ct. 3177, 3189 (1990).

Third, it is not even necessary for the Court in this case to resolve fully the tension between *Lyons* and *Schall*, for there are abundant statutory grounds that ought equitably to be considered as bases for reversing the judgment wholly apart from the merits. For example, it is clear, in this regard, that the District Court erred in allowing Plaintiffs to supplant the scheme for review of state action provided by the federal habeas corpus statute, 28 U.S.C. § 2254, with the scheme provided by 42 U.S.C. § 1983. To the extent any Plaintiff remained "in custody," and thus was capable of invoking the federal habeas statute, that statute, and not § 1983, ought to have been the basis for federal relief. Process does not exist for its own sake, and unless the Plaintiffs are prepared to use any favorable judgment in a probable cause hearing to gain release, Plaintiffs lack an "injury-in-fact." *See Codd v. Velger*, 429 U.S. 624, 627-29 (1977) (per curiam). The very necessity of such relief (release) as an ingredient of Plaintiff's standing theory, however, renders this case inappropriate for § 1983 review. *Cf. Gerstein*, 420 U.S. at 107 n.6 (citing *Preiser v. Rodriguez*, 411 U.S. 475 (1973)).

Plaintiffs, having not exhausted state remedies, are plainly barred, under the jurisprudence of § 2254, from the relief they obtained below, even if Fed. R. Civ. P. 23, "providing for class actions, is applicable to petitions for habeas corups relief." *Schall*, 467 U.S. at 261 n.10.[4] While

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[4] Likewise, unless this Court is prepared to accept an unprecedented broad reading of *Gerstein*, that a thirty-six hour

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this ground for reversal is not presented directly by the Petition, the Court may consider a "plain error" sua sponte, and it is "beyond debate" that the Court will do so if necessary to avoid decision of a substantial constitutional question. *See DeBartolo Corp. v. Florida Coast Trades Council*, 485 U.S. 568, 575 (1988). Here, the Article III issue is real and substantial, and could be avoided, or at least postponed, by vacating the judgment below for failure to comply with the requirements of habeas exhaustion. This Court's option of doing so, as in cases implicating *Pullman* abstention, *see Railroad Commission v. Pullman Co.*, 312 U.S. 496 (1941), does not depend upon the express desires of the parties. *See generally Ohio Bureau of Employment Services v. Hodory*, 431 U.S. 471, 480 n. 11 (1978).

In sum, as this Court has remarked on many occasions, the requirement of Article III standing confines the Courts of the United States to a constitutionally prescribed role in our democratic structure. In allowing the District Courts to enter broad injunctive orders requiring basic restructuring of the processes of California's criminal courts, the Ninth Circuit departed from that role and upset "the proper balance between state and federal

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post-arrest delay is on its face unconstitutional, regardless of any surrounding circumstances, then the District Court also erred in certifying a class of detainees. *Compare Honig*, 484 U.S. at 322 (given the strict requirements of the Education for the Handicapped Act and California educational policy the likelihood of collision between petitioner and respondent was "real and substantial" "in any California school district"). Because the individual claims in this case are plainly barred by *Lyons*, elimination of the class requires complete dismissal.

authority." *Lyons*, 461 U.S. at 112. Even if some litigants were entitled to relief, by way of individualized habeas actions, or even prayers for damages, the injunction below is simply answered by that "well-worn adage that 'two wrongs do not make a right,' " *Gray v. Mississippi*, 481 U.S. 648, 663 (1987). For this reason, the judgment should be vacated, and the case remanded with instructions to dismiss the complaints.

B. The Court of Appeals' Conclusion that California Law Does Not Provide a Sufficient Post-Arrest Review of Probable Cause is Directly Contrary to this Court's Precedents.

In holding unconstitutional California's statutorily prescribed mechanism for complying with this Court's mandate in *Gerstein v. Pugh*, 420 U.S. 103 (1975), the Court of Appeals misperceived this Court's understanding of the "significant pretrial restraint of liberty" that triggers the right to an independent probable cause determination in the first instance, and, more significantly, the "process that is due" once that threshold is crossed. *See Gerstein*, 420 U.S. at 125 & n. 26.

As this Court observed in *Schall v. Martin*, 467 U.S. 253 (1984), *Gerstein* does not "mandate a specific timetable," and in fact "indicated approval of pretrial detention procedures that supplied a probable-cause hearing within five days of the initial detention." *Id.* at 275, 277 n. 28. The notion that a precedent of this Court "must be followed," even at the preliminary injunction stage, *see Hutto v. Davis*, 454 U.S. 370, 375 (1982) (per curiam), provides the short answer to this case. *See Gerstein*, 420 U.S. at 123 n. 24 (citing, e.g., Haw. Rev. Stat. § 708-9(5)

(1968) *recodified at* Haw. Rev. Stat. § 803-9(5) (1985)), which provides for a probable cause hearing up to forty-eight hours after effectuation of an arrest).

The proposition that California's two-court-day rule (*see* 888 F.2d at 1278 (quoting California Penal Code §§ 825 and 991)) is unconstitutional under *Gerstein* fails at many levels, and the logic underlying it cannot support the injunction below.

As an initial matter, the Court of Appeals overlooked the facts prompting *Gerstein*. There, pretrial detainees languished in jail for weeks or longer without any guarantee of an independent probable cause determination. *See* 420 U.S. at 106 (delays of "a month or more after arrest"). It is against these facts that the "significant pretrial restraint" that triggers the right to a *Gerstein* hearing must be measured. *See Schall*, 467 U.S. at 275 (*Gerstein* rights triggered only by "extended restraint on liberty"); *cf. United States v. Salerno*, 481 U.S. 739, 749 (1987) (*Gerstein* authorizes "substantial liberty restrictions"). The notion that no "safe harbor" exists and all pre-presentment delay exceeding a few hours after arrest must be justified by reference to case-specific factors warranting such delay belittles the controversy that provoked *Gerstein*.

The central point that merits emphasis here is that the premise of the Court of Appeals' judgment entirely fails to take into account this Court's mandate that *Gerstein*'s logic need not deter " 'flexibility and experimentation by the States' " in devising procedures following a warrantless detention. *Schall*, 467 U.S. at 275. The Ninth Circuit's assessment of the "stay-equities," although not

conclusively final for purposes of the litigation below, so clearly departs from this mandate that it should be reversed as a matter of law. For, in upholding the District Court's injunction, the Ninth Circuit has eliminated the States' prerogative to "experiment" with procedures that provide *better* process than would occur under the Court of Appeals' own judgment. The judgment below is thus is erroneous.

As the Second Circuit Court of Appeals has reasoned, "the constitutional 'promptness' of a probable-cause hearing must be determined in light of the totality of the processes afforded the defendant." *Williams v. Ward*, 845 F.2d 374, 386 (2d Cir. 1988), *cert. denied*, 488 U.S. 1020 (1989). Indeed, this is – and has been – the essence of this Court's analysis of procedural due process questions for well over the past decade. *See generally Zinermon v. Burch*, 110 S. Ct. 975, 984 (1990) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

Here, as in *Williams*, the State of California, like numerous States, does not provide just "minimal ex parte procedures," 845 F.2d at 387, but full adversary proceedings. *See* California Penal Code §§ 825 and 991. The fact that members of the class might not receive a probable cause hearing in the first thirty-six hours after arrest is irrelevant because they are not entitled to one in light of California's legitimate interest in delaying *all* arrestees' hearings under *Gerstein*.

These interests, in large measure, are the detainee's interest as well, and, for this central reason, the judgment below is wrong. As this Court has made clear in decisions such as *Federal Deposit Insurance Corp. v. Mallen*, 486 U.S.

230 (1988), those accused of wrongdoing have "an interest in seeing that a decision concerning his or her continued suspension [of freedom] is not made with excessive haste." *Id.* at 243. This logic applies with equal force to suspensions of liberty. *See Zinermon*, 110 S. Ct. at 986. Indeed, because the findings of a *Gerstein* hearing, once concluded in favor of the State, may authorize a very substantial pretrial period of detention, the pretrial detainee's interest not just in speed, but accuracy, is at its height. Such delays not only "work to the advantage of the [detainee] since it gives his counsel . . . time to prepare," *Schall*, 467 U.S. at 277 n. 28, but allow the informed exercise of prosecutorial discretion, *see Heckler v. Chaney*, 470 U.S. 821, 831 (1985). By forcing the State to firmly commit to criminal action within the first day-and-a-half after arrest, the Ninth Circuit mandates the very sort of hasty decisionmaking that this Court has condemned. There is no support, in precedent, or logic, for the Ninth Circuit's overriding state law in this instance, for that law is designed, at its core, to make the detainee *better* off, procedurally, than if minimal *ex parte* process – which *Gerstein* explicitly endorses – were employed. There simply could not be a more "legitimate purpose" to delay in this context, and, as the Ninth Circuit suggested by its silence on the point, the record appears devoid of evidence that the delays experienced by the Plaintiffs were inflicted in order to assess punishment. *See Schall*, 467 U.S. at 269.

Reaffirmation of the "safe harbor" allowed by this Court's precedents is required, however, not only to allow the States the flexibility to experiment with procedures that are more meaningful both to prosecution

and defense, but to accord with this Court's balance of the needs of law enforcement with the rights of an accused in the period between a warrantless arrest and the initiation of the "critical" stages of the criminal process. Irrespective of California's justification for its delay of probable cause hearings to the time of arraignment, it is the majority view that the "administrative steps" the police are permitted to complete prior to presentment include such matters as "completing paperwork, searching the suspect, inventorying property, fingerprinting, photographing, checking for prior record, laboratory testing, interrogating the suspect, verifying alibis, ascertaining similarities to other crimes, and conducting lineups." *Sanders v. City of Houston*, 543 F. Supp. 694, 700 (S.D. Tex. 1982), *aff'd mem.*, 741 F.2d 1379 (5th Cir. 1984); *accord*, *Williams v. Ward*, 845 F.2d at 377-78 (pre-arraignment interviews, fingerprint checks, corroboration of past crimes, and prosecutorial review); *Patzig v. O'Neil*, 577 F.2d 841, 847 (3d Cir. 1978) (breathalyzer tests, and pre-arraignment interrogations). Particularly in cases of felony arrestees, "[t]he law enforcement interests at stake in these circumstances outweigh the individual's interest to be free of a stop and detention that is no more extensive than permissible in the investigation of imminent or ongoing crimes." *United States v. Hensley*, 469 U.S. 221 (1985), *quoted*, *Doulin v. City of Chicago*, 666 F. Supp. 318, 335 (N.D. Ill. 1986), *rev'd on other grounds*, 868 F.2d 959 (7th Cir. 1989). Indeed, endorsement of the Court of Appeals' judgment would, in an important way, threaten the viability of police questioning authorized by 18 U.S.C. § 3501, and override, through an improper expansion of the Fourth Amendment, this Court's longstanding refusal

to codify the *McNabb-Mallory* rules, which § 3501 replaced, as a matter of constitutional imperative.

This is so for one basic reason which appears to have been overlooked by the Court of Appeals for the Ninth Circuit. As this Court observed in *Schall, supra,* even if California procedure might, as applied, violate the Constitution in particular instances, "this sort of attack on a criminal statute must be made on a case-by-case basis." 467 U.S. at 269 n. 18. Put another way, if there is *any* Article III jurisdiction in this case, it is a jurisdiction only to hear a wholly *facial* challenge to California procedure, a challenge that is the most difficult of all challenges to sustain, and which must be overruled if there is *any* circumstance in which the challenged procedures would be lawfully applied. *See United States v. Salerno,* 481 U.S. 739, 745 (1987). Certainly there are instances in which, for various reasons related to the particulars of a case, the routine lineup, show-up, pre-arraignment interview, background or fingerprint check, or other "administrative step" which *Gerstein* permits may consume more than a day-and-a-half, regardless of what may be "needed" in the general case. *Compare* 888 F.2d at 1278. Respondents cannot require this Court to "sift through the entire class to determine whether the statute was constitutionally applied in each case." *Schall,* 467 U.S. at 269 n. 18. As a facial challenge, Respondent's attack on California law confronts the steepest of all possible slopes. Although the case remains in an interlocutory posture, Respondents' burden was not carried, and the judgment below is flawed on the merits.

CONCLUSION

For the foregoing reasons, the Court should vacate the judgment of the Court of Appeals and remand with instructions to dismiss the complaints. Should the Court not do so, it should reverse the judgment of the Court below on the merits.

Dated: Honolulu, Hawaii, November 15, 1990.

Respectfully submitted,

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No. 89-1817

IN THE

Supreme Court of the United States

October Term, 1990

COUNTY OF RIVERSIDE, et al.

Petitioners,

v.

DONALD LEE McLAUGHLIN, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

~~MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND~~ BRIEF OF AMICUS CURIAE COUNTY OF LOS ANGELES and SHERMAN BLOCK, SHERIFF OF LOS ANGELES COUNTY IN BEHALF OF PETITIONERS

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No. 89-1817

IN THE

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COUNTY OF RIVERSIDE, et al.,

Petitioners,

v.

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Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE COUNTY OF LOS ANGELES and SHERMAN BLOCK, SHERIFF OF LOS ANGELES COUNTY IN BEHALF OF PETITIONERS

The County of Los Angeles is a political subdivision of the State of California. [1] It is responsible for a Municipal Court System with 24 separate courts, one of which has 7 branches, and 187 judges, and a Superior Court system with a Central Criminal Court, eleven (11) branches and 238 judges, spread throughout the County. Arraignments and attendant probable cause hearings are usually held in the municipal court system.

Sherman Block is the Sheriff of Los Angeles County. As such, he is an officer of the County [2] whose duties include arresting and taking before Magistrates all persons who have committed a public offense, [3] taking charge of the County

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[1] California Constitution; Article XI; California Government Code sections 23000, 23002, 23003.

[2] California Government Code section 24000(b).

[3] California Government Code section 26601.

jail and the prisoners in it, [4] and transporting prisoners to and from the jails. [5] As is shown by this case, the Sheriff may be sued by a criminal defendant who claims that he has not received a probable cause determination in a timely manner. In Los Angeles County, the Sheriff operates five(5) jails, plus jails in each of 23 stations, which, at any one time, house approximately 23,000 inmates.

The Sheriff's Department has more than 8000 sworn deputies and conducts approximately 115,000 arrests per year. There is a much heavier incidence of crimes and arrests on weekends and holidays than on weekdays.

Los Angeles County covers approximately 4,000 square miles with a

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[4] California Government Code Section 26606, Penal Code Section 4000, et seq.

[5] California Government Code section 26747.

population of approximately 8,171,000. It contains 86 municipalities, 47 of which have their own police force and many of which have their own jails. The Sheriff provides direct law enforcement in the unincorporated area of the county and in those cities which have contracted for the service.

The County of Los Angeles and Sherman Block, as its elected Sheriff, bear the burden of balancing fiscal, security, constitutional and public policy concerns as they meet their obligation safely to detain large numbers of pretrial detainees and short term sentenced inmates in an enormous and largely urban setting.

In the County of Los Angeles, as in the County of Riverside, this difficult balancing process has been affected by Federal court intervention at the behest of inmates or classes of inmates.

Any determination by this Court which addresses the proper reach of Federal

constitutional standards for confinement of pretrial detainees or of probable cause hearings will necessarily affect the dynamic within which our correctional system, and those of other cities and counties across the state, must set priorities and allocate resources.

For these reasons, the County and Sheriff which have long and intensive experience with the implementation and operation of arrests, bookings, detention and probable cause hearings, and which must oversee and regulate a complex, urban correctional system and municipal court system within the context of Federal constitutional standards, respectfully request leave to present their views concerning the appropriateness of the decision below requiring that a probable cause determination be made before a Magistrate within thirty-six (36) hours of arrest. The County and Sheriff will not review the legal issues so thoroughly and

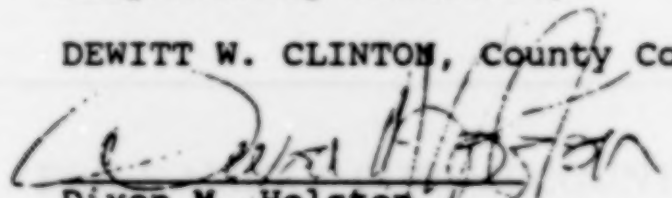
ably addressed by the parties. They seek more to elucidate issues essential to judging whether the California Rule, as established by the State Supreme Court and Statute, of holding the hearing at arraignment, within two (2) days after arrest, is justified and reasonable, by reference to their unusual expertise and experience.

WHEREFORE, the County and Sheriff respectfully move that the attached brief amicus curiae be accepted and filed with the Court. [2/]

Dated: November 14, 1990

Respectfully submitted,

DEWITT W. CLINTON, County Counsel



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[2/] Consent to the filing of a brief of an amicus curiae need not be had when the brief is presented by a state or a political subdivision of a state.

No. 89-1817

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Supreme Court of the United States

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COUNTY OF RIVERSIDE, et al.,

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BRIEF AMICUS CURIAE COUNTY OF LOS ANGELES and SHERMAN BLOCK, SHERIFF OF LOS ANGELES COUNTY IN BEHALF OF PETITIONERS

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STATEMENT OF INTEREST AND SUMMARY OF ARGUMENT

The County of Los Angeles (hereinafter "County") is a political subdivision of the State of California.[1] Sherman Block is the Sheriff of Los Angeles County (hereinafter "Sheriff") and an officer of the County.[2]

The County is responsible for the budget, staffing, facilities, administrative positions, security, etc. for the Superior Court of Los Angeles County, with its central criminal courts facility and eleven (11) branches and a municipal court system with 24 separate courts, one of which has seven (7) branches.

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[1] California Constitution, Article XI; California Government Code sections 23000, 23002 and 12003.

[2] California Government Code section 24000(b).

The views and experience of the County and the Sheriff may be useful in the resolution of the issues before the court in the following respects: First, the California time rules were established in response to, and in accord with the Gerstein, infra, mandates and are reasonable; second, the California time rules provide a uniformity in probable cause determinations throughout the courts fo the state which is desirable; and, third, the California rules give even greater rights to misdemeanors arrestees then were mandated by Gerstein, infra, and should be upheld.

The County and the Sheriff are placed in a very awkward position by the McLaughlin decision. No two jail systems or court systems are alike, and the needs and capabilities of each differ. The Court and Sheriff are complying with the law of the state on the time within which they are providing probable cause

determinations, they are vulnerable to being sued in federal court for failure to provide the determination within a reasonable time, as to any one of their many jails and/or courts under the McLaughlin theory. Further, separate trials could produce separate "reasonable time limits" for each of the many jails and courts. This result would be virtually unworkable in view of the many jails, courts and great numbers of prisoners. If decisions similar to McLaughlin were arrived at with respect to the Los Angeles County jails and courts, arrangements would have to be made to open courts, transport prisoners, provide security, drastically alter jail routines, etc., on holidays and weekends. The Court's experience with night courts shows that the expense for each court to be opened would be equivalent to funding an entire new court. This would be exclusive of the cost and burden to the Sheriff.

This court place an extreme cost and burden on an already overburdened and under funded system.

ARGUMENT

I

CALIFORNIA CASE LAW AND STATUTES REGARDING THE TIME WITHIN WHICH A PROBABLE CAUSE DETERMINATION MUST BE MADE ARE IN ACCORD WITH GERSTEIN AND SHOULD BE UPHELD.

First, the California rules with respect to the time within warrantless arrestees must be given a probable cause determination were established as a good faith response to the decision of this Court in Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d. 54 (1974). In the face of Florida law which would often delay such a determination more than thirty (30) days after arrest, the Court held that the Fourth Amendment requires a

judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest, and that the determination must be made either before or promptly after arrest. Gerstein, supra, p. 114 and 125.

The California Supreme Court, out of respect and concern for the decision of this Court in Gerstein, accepted and decided a case later that year which case could otherwise have been considered moot. In Re Walters 15 C 3d. 738, 743-4, 126 Cal.Rptr. 239,543 P. 2d. 607. Consistent with Gerstein, it held that, unless waived, a judicial determination of probable cause is required in every case where a defendant charged with a misdemeanor is detained awaiting trial, and that the determination is to be made at the time of arraignment or bail setting which usually takes place simultaneously within two (2) days after arrest.

Walters, supra, p. 747 and 750; California Penal Code sections 822 and 825.

Penal Code section 825 provides in relevant part as follows:

> "The defendant must in all cases be taken before the magistrate without unnecessary delay, and, in any event, within two days after his arrest, excluding Sundays and holidays; provided, however, that when the two days prescribed herein expire at a time when the court in which the magistrate is sitting is not in session, such time shall be extended to include the duration of the next regular court session on the judicial day immediately following . . ."

Penal Code section 991, enacted in 1980, provides that an in custody misdemeanor defendant has a right to a

probable cause determination at the time he appears before the magistrate for arraignment. Lastly, certain police agencies tried to extend the time limit by interpreting the two days as 48 hours. Under this reasoning, if a defendant were arrested on a Tuesday evening, the 48 hours would expire Thursday evening. Since no court was in session in the evening, the time would be extended through Friday. It was held that this interpretation violated the defendant's rights, that "two days" means "two days", and that under the example above, the defendant must have his hearing by the end of the day on Thursday. Youngblood v. Gates, 100 Cal.App.3d 1302, 1313, 246 Cal.Rptr. 775. (Petn. for Review denied August 18, 1988). In other words, the California courts and legislature have attempted in good faith to apply Gerstein in a fair and uniform manner, and to resist any efforts to erode its doctrine.

II

THERE IS A NEED FOR UNIFORMITY AS TO THE TIME LIMITS FOR A PROBABLE CAUSE DETERMINATION WITHIN THE COURTS AND JAILS OF THE 58 COUNTIES AND WITHIN LOS ANGELES COUNTY WHICH SUGGEST THAT THE CALIFORNIA LAW SHOULD BE UPHELD.

Secondly, there should be a uniform rule in a County as large and complex as Los Angeles, and in a state as large and complex as California. If the McLaughlin decision is upheld, there could be trials as to what constitutes a reasonable time for the probable cause determination not only in every county in California, but as to every jail and court system in every county. With different courts interpreting facts from differing agencies, there might well be holdings that 36 hours is reasonable in Riverside,

48 hours as to Los Angeles central jail, 28 hours as to Long Beach jail, 51 hours in San Francisco, etc. Further, each venue could be retried every time counsel thought they perceived a reason for a changed-time requirement. Would there be a different time for a Friday/Saturday/ Holiday arrest, when the frequency of crime and arrests are higher, than for a weeknight? Shall there be a lower time requirement for an arrestee in Beverly Hills, where the incidence of crime is low, than for an arrestee in South Central Los Angeles, where the number of arrestees is higher? Such a result, on its face, would be chaotic, and should not be countenanced by this court. The writ of certiorari should be granted.

III

THE CALIFORNIA LAW AS TO TIME LIMITS FOR PROBABLE CAUSE DETERMINATIONS SHOULD BE UPHELD AS IT GRANTS GREATER RIGHTS TO MISDEMEANOR ARRESTEES THAN IS MANDATED BY GERSTEIN.

Lastly, the California law in applying the Gerstein mandate should be supported as giving the in-custody misdemeanor arrestee greater rights than were required by Gerstein. In Gerstein, this court approved an "informal procedure" in determining probable cause, and held that adversary safeguards at this stage such as right to counsel, confrontation and cross-examination were not required, Gerstein, supra, p. 119-122. Further, this court recognized that different approaches would be approved.

". . .We recognize that state systems of criminal procedure vary widely. There is no single preferred pretrial procedure, and the mature of the probable cause determination usually will be shaped to accord with a State's pretrial procedures viewed as a whole. While we limit our holding to the precise requirement of the Fourth Amendment, we recognize the desirability of flexibility and experimentation by the States. It may be found desirable, for example, to make the probable cause determination at the suspect's first appearance before a judicial officer, (citation), or the determination may be incorporated into the procedure for setting bail or fixing other of pretrial

release. . ." Gerstein, supra, p. 123-124.

The California courts and legislature have implemented Gerstein by linking the probable cause determination to the arraignment, which in turn must be done within two (2) days. They have added rights not required by Gerstein as follows: Gerstein hearing required even when misdemeanor suspect is arrested on a warrant; right to counsel at hearing; right to be present at hearing. Walters, supra, p. 749-750.

In summary, it is submitted that the uniform two (2) day rule throughout the state is reasonable, and that the speculative benefit of any minor reduction in this time which might be possible in individual courts is far more than offset by the additional rights, such as right to counsel, given to the misdemeanor arrestee.

IV.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Dated: November 14, 1990

Respectfully submitted,

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(13)

No. 89-1817

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In the Supreme Court

OF THE

United States

OCTOBER TERM 1990

COUNTY OF RIVERSIDE and COIS BYRD,
SHERIFF OF RIVERSIDE COUNTY,
Petitioners,

VS.

DONALD LEE MCLAUGHLIN, et al.,
Respondents.

On Writ Of Certiorari To The United States Court of Appeals For the Ninth Circuit

BRIEF OF AMICUS CURIAE IN SUPPORT OF RESPONDENTS ON BEHALF OF THE YOUTH LAW CENTER

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INTEREST OF THE AMICUS CURIAE

The Youth Law Center is a non-profit public interest law organization which is dedicated to the protection of the rights of young people. The attorneys and staff of the Youth Law Center engage in a variety of advocacy activities, including litigation over violations of constitutional and statutory rights of children. The litigation docket of the Center includes a large number of cases that challenge the conditions and procedures of institutional confinement. The majority of these cases are class action cases conducted pursuant to 42 U.S.C. § 1983.

The Youth Law Center represents youth in civil rights litigation in jails, juvenile detention centers, juvenile training schools, and adult prisons. It is the rule in these cases, rather than the exception, that named plaintiffs and class representatives who are confined at the commencement of the litigation are released or transferred, or otherwise undergo some change in legal status, during the pendency of the litigation. Classes of juvenile plaintiffs are generally even more transitory than classes of incarcerated adults because periods of detention or other confinement tend to be relatively brief. In our cases we often rely on the principles articulated by this Court in Gerstein v. Pugh, 420 U.S. 103, 110 n. 11 (1975), when issues of standing or mootness are raised. Gerstein provides an exception to the general rule in cases involving transitory claims for cases "capable of repetition, yet evading review." This Amicus brief in support of the respondent will address the im-

portance of that exception in the context of institutional litigation.

ARGUMENT

The principle of standing established in Gerstein is essential to remedy constitutional violations in institutional cases.

The courts have long recognized that cases may arise in which constitutional violations have occurred, but are of such short duration that individual plaintiffs may lose their standing to pursue injunctive relief. The class action is the vehicle by which injunctive relief may be pursued in such cases. Sosna v. Iowa, 419 U.S. 393, 399 (1974); Gerstein v. Pugh, 420 U.S. 103, 110 n. 11 (1975); United States Parole Commission v. Geraghty, 445 U.S. 388, 398 (1980).

Lawyers at the Youth Law Center, as well as our colleagues at the American Civil Liberties Union National Prison Project, the Mental Health Law Project, the National Center for Youth Law, and others, including independent litigators such as the counsel of record for the plaintiffs here, comply with the procedural requirements described in the above cases: when injunctive relief is sought, named plaintiffs and plaintiff representatives are incarcerated in the institution in question, and are suffering from the alleged harms, at the commencement of litigation. A request for class certification is included in the complaint. This practice meets the standing requirement of Sosna and Gerstein and

assures the adequacy of representation of the class required by Rule 23, Fed. R. Civ. P. As a general matter, named plaintiffs and plaintiff representatives must be members of the class at the time of class certification. However, Sosna and Gerstein provide for an exception in the event of transitory claims for which no individual will retain standing long enough for the court to rule on class certification.[1] The plaintiffs in this case have clearly met these requirements.

The situation is different for constitutional claims by individual plaintiffs. In City of Los Angeles v. Lyons, 461 U.S. 95, 105 (1983), the Court made clear that in order for an individual plaintiff to retain standing to pursue injunctive relief, he must make a showing of a "real and immediate threat" of a future constitutional violation, id. at 105, regardless of any violations that might already have occurred. In that case, since Lyons could not make such a showing, his claim for injunctive relief was dismissed. In a class action, the standing requirement is satisfied because members of the class continue to face the "real and immediate threat" of

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[1] These principles are widely accepted among the federal courts. See White v. Matthews, 559 F.2d 852, 857 (2d Cir. 1977); Wilkerson v. Bowen, 828 F.2d 117, 121 (3rd Cir. 1987); Jones v. Diamond, 519 F.2d 1090, 1097 (5th Cir. 1975); Ball v. Wagers, 795 F.2d 579, 581 (6th Cir. 1986); Robinson v. City of Chicago, 868 F.2d 959, 968 (7th Cir. 1989); Reed v. Bowen, 849 F.2d 1307, 1310 (10th Cir. 1988); In re Thornburgh, 869 F.2d 1503, 1509 n. 7 (D.C. Cir. 1989); Cruz v. Collazo, 84 F.R.D. 307, 316 (D.P.R. 1979); Avery v. Powell, 695 F. Supp. 632, 642 n. 13 (D.N.H. 1988); But cf. Tucker v. Phyfer, 819 F.2d 1030 (11th Cir. 1987) (proposed named plaintiff aged out of class before class certification was requested).

future constitutional violation. The Gerstein exception for class actions was not addressed in Lyons.

The gist of the argument of the defendants is that the principle of Lyons should be extended to apply to class action cases. Simply put, their argument is that for any plaintiff who has suffered a constitutional violation to be eligible for injunctive relief, regardless of whether he is a member or representative of a class suffering similar violations, a showing must be made that the violation at issue will happen, to him, again. Defendants argue that it should not matter that the violation will occur to other members of the class, even if the unconstitutional conduct is the result of clearly stated policy and is certain to reoccur. The suggestion of the defendants is a novel one, and is unsupported by precedent. Perhaps that is why the issue was so quickly disposed of by the Ninth Circuit.[2]

Such an extension of the principles of Lyons would have a profound negative effect upon the ability of classes of incarcerated or institutionalized plaintiffs to obtain relief from illegal conduct which results in violations of their constitutional rights. This possibility is cause for concern in situations such as that presently at issue, i.e., the systematic denial of prompt probable cause determinations before incarceration, but becomes even more disturbing upon consideration of other types of violations that frequently occur in institutions, such as

[2] It is also clear that if this argument were accepted, this Court would not have had jurisdiction to decide Gerstein, as well as Schall v. Martin, 467 U.S. 253 (1984), which was decided after Lyons.

extended isolation, lack of proper sanitation, inadequate fire safety, and improper use of mechanical restraints. Life-threatening practices continue to occur in institutions, and often the only effective means of protecting plaintiffs is the federal court injunction. The Youth Law Center has had substantial experience in such situations.

For example, in Milonas v. Williams, 691 F.2d 931 (10th Cir. 1982), cert. denied, 460 U.S. 1069 (1983), a class of juvenile plaintiffs challenged conditions at the Provo Canyon School in Utah. The oppressive and dangerous conditions included the practice of grasping children's hair and pulling backward, called the "hair dance"; locking children up in tiny isolation cells for long periods of time; and subjecting children to polygraph tests as part of their "therapy". The damages portion of the case was tried before a jury, and the court later entered a permanent injunction prohibiting the challenged practices. The Court of Appeals for the Tenth Circuit specifically considered the issue of standing. Id. at 936-38. On the date the lawsuit was filed, the District Court had ordered that the named plaintiffs be removed from the facility and placed elsewhere because of the threat of retaliation against them. The class had not been certified at that time. The defendants challenged the standing of the named plaintiffs. The Court of Appeals applied the rule of Gerstein in affirming the District Court decision that the named plaintiffs met the standing requirements, because they were in the facility at the time the complaint was filed, and that the class was properly certified.

In Bobby M. v. Martinez, Civ. Case No. TCA 83-

7003 MMP (N.D. Fla. January 5, 1983) (Complaint), a class of over 1200 children challenged the conditions of their confinement in three Florida training schools. A preliminary injunction was issued that prohibited the practice of "hogtying" which consisted of binding hands and feet with metal handcuffs and strapping the connecting chains of the cuffs together behind the child's back. It was discovered that children as young as ten years old were subjected to this practice, and were allowed to remain chained in this fashion for several hours or days at a time. Even after the state Inspector General condemned the practice in a report to the Legislature, the practice persisted until it was enjoined by the federal court. Id. (Order on Preliminary Injunction, July 14, 1983.) The District Court issued another injunction that prohibited the extensive use of isolation of children in strip cells. Id. (Order on Use of Security Units and Lockup, July 5, 1984.) Children ten, eleven and twelve years of age were often held in isolation for periods of more than a month, without access to books, television, or regular contact with other people. Because of these injunctions, mechanical restraints and isolation are no longer used in these institutions.

During the investigation of the Bobby M. case, plaintiffs' counsel discovered a group of teenage boys with chicken pox who, because they were thought to be infectious, were housed in a storage closet that had no ventilation, no toilet or bath facilities, and no sheets for their plastic covered mattresses. A consent decree was entered in the case which required the state to provide adequate medical care. Id. (Consent Decree, May 8,

1987.)

Danny O. v. Bowman, Civil No. 84-1272 (D. Idaho July 12, 1985) (Judgment) involved children held at the State Youth Services Center in St. Anthony, Idaho. Children were punished in this institution by being placed in strait jackets, attached to hooks, and hoisted to hang upside down from the ceiling. They were also forced to stand against walls and sit on chairs for excruciatingly long periods of time, often for days. The case was tried before the federal court and these practices were found to violate the constitutional rights of the plaintiffs and were prohibited.

In Gary H. v. Hegstrom, 831 F.2d 1430, 1433-37 (9th Cir. 1987) (Ferguson, J., concurring), children were placed in filthy isolation cells for extended periods of time. In Robert K. v. Bell, Civil Action No. 83-287-0 (D.S.C. April 30, 1984) (Consent Decree), the court restricted the practice of placing mentally disturbed children naked in four point restraints and forcibly injecting them with psychotropic drugs. These are just a few examples of the types of practices for which plaintiffs turn to the courts for protection. Actions for damages after the harm has been done, as suggested by the defendants, are not sufficient to protect children from these abusive violations.

Similar cases arise which involve children who are held in adult jails. Even though this practice has been roundly condemned, and federal statutes provide incentives to its prohibition by the states, see Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. § 5600, et seq. (1974), it continues. In these instances

standing is a critical issue because confinement, as in Gerstein, is usually brief. As the court noted in the leading case of D.B. v. Tewksbury, 445 F. Supp. 896, 898 (D.C. Or. 1982),[3] "Children do not stay in CCCF for long periods of time... 70 percent of the children who were confined in CCCF in 1981 were released within 24 hours." The case proceeded to trial as a class action and resulted in a ruling that incarceration of any child in that facility pending adjudication by the juvenile court was a violation of the Fourteenth Amendment. The conditions in this jail were truly appalling:

> Children held in CCCF are not issued sheets, mattress covers or pillows. They sleep on mattresses covered with urethane and they are given a wool blanket. Occasionally children are not given mattresses. Those children placed in isolation cells sleep on cement floors.
>
> * * * *
>
> No child lodged in CCCF may have underwear.
>
> * * * *
>
> Toilet facilities at CCCF ar not screened from view... [f]emale children using the toilet or shower are visible to male corrections officers. Male children using the toilet are visible to matrons.
>
> * * * *
>
> Children in CCCF are sometimes placed in either of two isolation cells. These are 8'x 8' windowless concrete block rooms, barren of all furniture

[3] This case was not litigated by the Youth Law Center.

> and furnishings. Sometimes it is very cold in the isolation cells. Near the center of the isolation cell there is a sewer hole which is the only facility for urination and defecation.... When the mechanism for the sewer is flushed by a corrections staff officer, water and sewage gushes onto the cell floor. 445 F. Supp. at 898-99.

Clearly individual damage actions were not the answer for the hundreds of children who had been held in this Oregon jail; injunctive relief was the only sensible legal method for preventing further harm. It made sense for the children and it also made sense for the court. The remedial injunction is the only effective means of ending such abuses. Damages are retrospective and restorative and are traditional actions at law; injunctions are prospective and protective and are traditional actions in equity. 11 Wright and Miller, Federal Practice and Procedure § 2941 (1973). Their purposes are not interchangeable. Rule 23(b) Fed. R. Civ. P. specifically anticipates injunctive claims in class actions.

These cases have been important in protecting children from unconstitutional practices. Injunctive relief would have been impossible in virtually all of them if each member of the class had been required to show that the challenged practices were certain to happen to each of them, personally, in the future, as would be required under Lyons.

In their brief at p. 23, defendants ask "What interest do the named plaintiffs have in vigorously litigating the question of whether individuals who may be arrested in the future will receive prompt probable cause determinations which, according to the allegations of their complaint, they did not (and indeed now can-

not) receive?" (emphasis in original) The answer is that their interest is in protecting the unnamed members of their class, whom they are charged with representing, from the harm that they have suffered. Geraghty, supra, 445 U.S. at 398. This is the essence of the class action, and the underlying rationale for all the principles and procedures which have developed around such litigation.

CONCLUSION

In our federal system, courts are often faced with the delicate balance of protecting plaintiffs' constitutional rights while also protecting the important principles of equity, comity, and federalism. But the defendants here are asking the Court to go too far. The argument they press would make it virtually impossible for institutionalized plaintiffs to pursue injunctive relief to protect themselves from policies and practices that result in violations of their constitutional rights. For these reasons, the Court should leave long precedent undisturbed, and should reject the argument of the defendants on the issue of standing.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

COUNTY OF RIVERSIDE, AND COIS BYRD, SHERIFF OF RIVERSIDE COUNTY,
Petitioners,

vs.

DONALD LEE McLAUGHLIN, et al.,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS FILED ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION

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INTEREST OF AMICUS CURIAE

The American Civil Liberties Union ("ACLU") is a nationwide, nonpartisan organization of over 250,000 members dedicated to advancing fundamental constitutional rights. The ACLU has had a long interest in defending the constitutional rights of persons in detention and has been involved in numerous cases involving these issues in the state and federal courts. The ACLU of Southern California, an affiliate of the ACLU, filed an amicus curiae brief in the Court of Appeals in support of Respondents.

In accordance with Supreme Court Rule 37.3 this amicus curiae brief is filed with the consent of the parties. Copies of the parties' letters of consent were

filed with this Court on December 19, 1990, in accordance with Rule 36.2.

STATEMENT OF THE CASE

When a person is arrested without a warrant, that person has a constitutional right to a prompt determination of probable cause. Gerstein v. Pugh, 420 U.S. 103 (1975). The Respondents, Donald Lee McLaughlin, Johnny E. Jones, Diane Simone, and Scott Hyde represent a class of people who have been arrested without a warrant and are held in jail without a prompt determination of probable cause. Among this class are people released as soon as probable cause hearings are held because of insufficient grounds for arrest. Some of these people should never have been arrested at all. Others in the class would be detained, after a probable

cause determination, pending further legal proceedings.

As alleged in the complaint, the four named plaintiffs were all arrested without a warrant and incarcerated in the Riverside County jail. Of central importance to the justiciability issue is that three of the four named plaintiffs -- Johnny E. Jones, Diana Ray Simon, and Michael Scott Hyde -- were all in jail at the time they filed the Second Amended Complaint.[1] They alleged that they had been arrested without warrants, were in jail in Riverside County, and had neither received prompt probable cause hearings

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[1] The fourth named plaintiff, Donald Lee McLaughlin, had apparently been released by the time the named plaintiffs filed the Second Amended Complaint; he was not arraigned during the five days he spent in jail, nor had he seen a judge during that time. Joint Appendix ("J.A.") 3.

nor arraignments (a formal pretrial procedure under California law, see Cal. Penal Code §825). These plaintiffs also alleged that, by virtue of the policy and practice of Petitioner County of Riverside and the other petitioners (collectively "the County"), they were being deprived of their right to have a neutral third party afford a prompt review of the probable cause for their arrest. The named plaintiffs sought to represent a class of "all present and future prisoners in Riverside County Jail . . . arrested without a warrant . . . [and] denied prompt probable cause, bail, or arraignment hearings." J.A. 7.

After orally certifying a class on November 14, 1988, the district court held that the County had failed, as a matter of policy, to provide those arrested without

warrants with a prompt probable cause determination, as required by the Court in Gerstein v. Pugh, 420 U.S. 103 (1975). The district court found that for those arrested without a warrant, as many as five days' delay occurred between the arrest and a determination of probable cause by a neutral third party. Further, information in the record indicated that, for individuals who were charged with felonies rather than misdemeanors, probable cause hearings could be coupled with preliminary hearings and thus might not occur until ten court days after arraignment. J.A. 299. The district court determined that the County could proceed administratively within twenty-four hours without undue difficulties, and therefore issued an injunction requiring that the County, absent "exigent

circumstances," expedite probable cause determinations so as to bring them within the requirements of Gerstein. The trial judge adopted thirty-six hours after arrest as the time in which, absent exigent circumstances, the County must afford a probable cause hearing.

The Ninth Circuit affirmed. The Court of Appeals found undisputed both that Jones, Simon, and Hyde were, when they filed the Second Amended Complaint, in custody without warrants and without a probable cause determination; and that the County did not claim that it needed additional time, but could process those individuals as the district court had determined. 888 F.2d 1276, 1278 (9th Cir. 1989). Relying upon the limited scope of the injunction -- which applied only to inmates at the urban center Riverside

County Jail and which was issued without fixed time limits for implementation -- the appellate court upheld the district court's conclusions on both the justiciability of the lawsuit and the propriety of the remedy ordered.

SUMMARY OF ARGUMENT

In arguing that Jones, Simon, and Hyde had no right to seek injunctive relief, the County asks this Court to craft a novel and radical new doctrine of standing. To substantiate its view, the Country relies on a portion of the Complaint -- in which the plaintiffs state that they "did not receive" a prompt probable cause hearing [J.A. 3] -- and argues that plaintiffs' injury had ended before the complaint was filed. The County attempts to cast the alleged injury as having already occurred because the

time for having a "prompt" hearing had (in the County's view) come and gone. What the County ignores are the next three words of the complaint, in which the named plaintiffs allege that they "have not received a probable cause" hearing [J.A. 3 (emphasis added)] and that their injury -- detention without a warrant and without a probable cause hearing -- was ongoing and continuing into the future.

This Court has never held that a person who is suffering ongoing injury cannot obtain injunctive relief simply because that person has already suffered some injury. Rather, the standing issue here falls well within the familiar jurisprudence of this Court: these plaintiffs were arrested without a warrant; were in jail and held without a probable cause hearing; and filed a

complaint seeking an injunction to obtain a remedy that would have redressed the injury caused by the County's policy and practice of holding them without a prompt probable cause determinaton.

As the courts below decided on the basis of this Court's precedents, at the moment that Jones, Simon and Hyde filed their complaint, they alleged (and it has never been disputed) that they were suffering a direct and current injury as a result of the County's unconstitutional conduct, and that an injunction would redress that injury. This is sufficient to confer standing. Of course, the injury that Jones, Simon, and Hyde were suffering was one on which a court would be unlikely to rule before it abated; class certification meant that, at the time the court could reach the merits, individuals

with "live" controversies would be before the court. Because Jones, Simon, and Hyde had met the standing requirements at the moment that they filed the Second Amended Complaint, the controversy remained "live" as a result of the later class certification. Thus, like Sosna v. Iowa, 419 U.S. 393 (1975), and United States Parole Commission v. Geraghty, 445 U.S. 388 (1980), this case would more properly be characterized, not as one implicating issues of standing, but as one which could have become moot, but which did not.[2]

The second issue in this case -- whether the district court properly issued

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[2] The County has not couched its justiciability argument as one of mootness and has not asked this Court to overturn Geragty and Sosna, but rather has argued that this Court ought to so extend Lyons as to preclude a host of injunctive relief cases. See, e.g., Nebraska Press Association v. Stewart, 427 U.S. 539 (1976).

the injunction -- makes affirmance appropriate or requires dismissal of the writ as improvidently granted, because of record ambiguities. The district court concluded that Riverside County had failed to provide all individuals, arrested without warrants, with prompt probable cause hearings. The record supported these conclusions: it is undisputed that the County kept some individuals in custody without a probable cause determination for as much as five days. Procedures apparently varied for those arrested on misdemeanors and on felonies. In misdemeanor cases, individuals were supposed to be informed at the arraignment that they had a "right to a hearing" on probable cause, "if . . . request[ed]." J.A. 123. In felony cases -- according to the Riverside District Attorney --

individuals can be arrested without a warrant and kept in custody until a "preliminary hearing," another formal pretrial procedure in California,[3] at which point the probable cause determination occurs. J.A. 298-299.

The County neither argues that it cannot comply with the district court's injunction[4] nor focuses this Court's attention on the facts of this case. Rather, the County asks this Court to

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[3] The two key California procedures are the arraignment, which occurs from between two and five days after arrest (Cal. Penal Code §825), and the preliminary hearing, which occurs up to ten days after arraignment (Cal. Penal Code §859b). Thus, the preliminary hearing may not occur until over two weeks after arrest.

[4] Indeed, the County's District Attorney stated that it could comply with the time frame within which its neighbor, Orange County, operates -- the exact same time frame imposed by the district cout injunction at issue herein.

speculate about whether, as a general proposition, counties in California can combine Gerstein probable cause hearings with other preliminary criminal proceedings. Amicus respectfully contends that, while that question may be of academic interest, it is not presented by the facts of this case.

The record does substantiate the propriety of the injunctive relief granted, but this record does not establish the time frame within which the County provides probable cause hearings to individuals arrested on felony charges. The video shown to felony arrestees states that: "you have a right to have a hearing . . . within a reasonable time, at your request." J.A. 129. The Riverside District Attorney states that for felony arrestees the probable cause determination

occurs "within ten days after the arraignment" (emphasis added), and further notes that the California Penal Code sets out the "guidelines with regards to felons and probable cause hearings which we refer to as the preliminary hearing process." J.A. 298-299. Inferentially, Riverside County holds felony arrestees for an extended period of time and couples Gerstein hearings with preliminary hearings -- not arraignments. In contrast, in the brief submitted to this Court, the County maintains that it provides Gerstein hearings for felony arrestees "at the arraignment," (BP 41, n. 12) and that it has "steadfastly agreed to provide such hearings at . . . arraignment and not at preliminary hearing." Id.

In short, on this record, one cannot tell when the County actually gives

probable cause hearings to felony arrestees. This case is not the occasion upon which the Court should determine whether Gerstein hearings can be linked to other state procedures and under what circumstances. It may thus be appropriate for this Court to dismiss the writ as improvidently granted.[5] In the alternative, on the record as it now stands, the Court could appropriately affirm on justiciability and on the merits under Federal Rule of Civil Procedure 52.

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[5] See Kimbrough v. United States, 364 U.S. 661 (1961).

I.

RESPONDENTS PRESENTED A JUSTICIABLE CLAIM TO THE DISTRICT COURT: AT THE FILING OF THE COMPLAINT, THEY WERE INCARCERATED AND HAD NOT RECEIVED A PROBABLE CAUSE HEARING; THEY THEREFORE HAVE STANDING TO SEEK INJUNCTIVE RELIEF

To establish standing, a named plaintiff must show injury-in-fact, causation, Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. 26 (1976), and redressability of the injury through the requested relief. Larson v. Valente, 456 U.S. 228, 239 (1982). "[B]oth the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." Warth v. Seldin, 422 U.S. 490, 501 (1975); Jenkins v. McKeithen, 395 U.S. 411, 421-22 (1969).

Further, as the County agrees, so long as the named plaintiff in a class action has standing at the time the complaint is filed, a live controversy exists -- the case is not moot -- even if the named plaintiff later loses his or her stake in the controversy, so long as the unnamed class members continue to have a live controversy. United States Parole Commission v. Geraghty, 445 U.S. 388, 403 (1980), citing Gerstein v. Pugh 420 U.S. at 110, n.11; Swisher v. Brady, 438 U.S. 204, 213, n. 11 (1978); Sosna v. Iowa, 419 U.S. 393 (1975). The class certification will relate back to the filing of the complaint. Swisher v. Brady, 438 U.S. at 213, n. 11 (1978); Sosna v. Iowa, 419 U.S. at 402 n. 11.

Under these precedents, Jones, Simon, and Hyde had standing when they filed the

Second Amended Complaint. The pleading alleged that they were arrested without a warrant and incarcerated at the time of filing and that they had not received a prompt probable cause determination. In addition, according to the allegations of the Second Amended Complaint, J.A. 3, Jones, Simon, and Hyde had not been arraigned. Under County policy and practice, they faced the continued threat of ongoing constitutional deprivation until they had their hearing. This ongoing and threatened injury was caused directly by the challenged conduct of the County.

The complaint also satisfies the redressability requirement. Contrary to the County's assertion, an injunction might have afforded Jones, Simon, and Hyde complete relief -- a prompt probable cause

determination. The Second Amended Complaint does not detail how long these individuals were in custody at the time they filed the pleading. It says only that they "did not receive and have not received prompt" hearings, not that it is too late to have one. Had the district court issued its injunction immediately, that injunction itself could have completely redressed the alleged injury to these three individuals.

Jones, Simon, and Hyde satisfy the redressability requirement for another reason. Even if they had been in jail for some amount of time, an injunction still would have given them "substantial and meaningful relief," see Larsen v. Valente, 456 U.S. at 243, by accelerating the probable cause determination. The Second Amended Complaint alleges that, when

Jones, Simon, and Hyde filed the pleading, they had not yet had bail hearing and had not been arraigned. J.A. 5. If they had been arrested on felony charges, and if they were not going to receive a probable cause determination until the preliminary hearing (as the Riverside District Attorney indicates was the County's practice), then an injunction could have ordered the County to provide a probable cause determination much sooner than the County's policies and practices would permit. Jones, Simon and Hyde could have received a direct and significant benefit from injunctive relief.[6]

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[6] The conclusion that Respondents had standing to seek injunctive relief finds support in this Court's opinion in Gerstein itself. In Gerstein, this Court reached the merits of the plaintiffs' claim, even though the plaintiffs in that case could never have received a "prompt" probable cause determination. As this (continued...)

Because Jones, Simon and Hyde

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[6](...continued)
Court explained, because it was "by no means certain that any given individual, named as plaintiff, would be in pretrial custody long enough for the district court to certify a class," the Court permitted an exception to the mootness doctrine. 420 U.S. at 110 n. 11. By discussing mootness and reaching the merits in Gerstein, this Court must have assumed that -- because at the time plaintiffs filed the complaint they were incarcerated without having had the constitutionally mandated determination -- the named plaintiffs in the class action had standing.

The County tries to explain Gerstein by asserting that the Court in that case simply "assumed" that the named plaintiffs had standing at the time of the complaint and by arguing that, in any case, Gerstein was decided eight years before City of Los Angeles v. Lyons, 461 U.S. 95 (1983). BP 27, n. 8. Gerstein was decided in 1975, the same year as Warth v. Seldin, 422 U.S. 490, and Ellis v. Dyson, 421 U.S. 426; a year after O'Shea v. Littleton, 414 U.S. 488; and a year before Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26 -- all opinions that the County cites in support of its position. Because standing is a jurisdictional requirement, lack of standing can be raised on the Court's own motion. Regents of University of Calif. v. Bakke, 438 U.S. 265, 281 n. 14 (1978).

continued to suffer actual and threatened redressable injury when the complaint was filed, the County's reliance on City of Los Angeles v. Lyons is misplaced. In Lyons, the plaintiff brought an action seeking to enjoin the Los Angeles Police Department's use of chokeholds in cases not involving the threat of death or serious bodily injury. In holding that the plaintiff had no standing to seek injunctive relief, this Court noted that Lyons had failed to show that he would again have another encounter with the police; that the police always choke any citizen with whom they have an encounter; and that the City ordered or authorized the police to act in such a manner. 461 U.S. at 105-06. Because Lyons could not make these showings, any threat of future

harm -- being subjected to another illegal chokehold -- was speculative. Id.

What distinguishes Lyons from this case, however, is that in Lyons, the wrongful conduct directed toward the plaintiff had ceased long before he filed his lawsuit. As the Court recognized, during those few seconds, "Lyons had a live controversy with the City" -- i.e., standing to seek an injunction. Id. at 109. However, that controversy ended when the police officer released Lyons from his grip, and damages, not injunctive relief, provided the only remedy available to Lyons. By contrast, in this case the wrongful conduct -- the illegally prolonged incarceration without a probable cause determination -- and therefore the live controversy, had not ended at the time the Jones, Simon, and Hyde filed

their Second Amended Complaint. Instead, at that time, these plaintiffs were in jail after a warrantless arrest and were deprived of their right to a determination of probable cause -- the County maintaining its stranglehold on their constitutional rights.[7] Lyons is no bar to this case proceeding on the merits.[8]

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[7] For similar reasons, the other cases on which the County relies are distinguishable. E.g. Golden v. Zwickler, 394 U.S. 103 (1969) (allegedly illegal prosecution had terminated before complaint was filed); O'Shea v. Littleton, 414 U.S. 488 (1974) (at time complaint was filed, plaintiffs were neither subject to existing wrongs nor that they would be threatened with future arrest); Ellis v. Dyson, 421 U.S. 426 (1975) (unclear whether criminal proceedings had concluded when complaint filed, and uncertain whether plaintiff would be subject to prosecution again).

[8] For these reasons, the County's detailed argument about the possibility that Jones, Simon, and Hyde will be arrested in the future is entirely beside the point: the named plaintiffs were suffering existing, redressable injury (continued...)

Nevertheless, the County, relying on Lyons, seems to argue that Jones, Simon, and Hyde were, when they filed the Second Amended Complaint, no longer suffering redressable injury. According to the County, because these named plaintiffs alleged that they had already been denied a prompt Gerstein hearing, their injury had "passed," and an injunction could not redress that injury because the time for a prompt hearing had come and gone. BP 16-17. This analysis ignores the evidence in the record and makes no sense. As discussed above, the Second Amended Complaint alleges that Jones, Simon, and Hyde were arrested without warrants and had not had probable cause hearings, bail hearings, or arraignments. J.A. 5. The

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[8](...continued) when they filed the Second Amended Complaint.

pleading nowhere sets forth the amount of time that the plaintiffs had been in jail at the time they filed the Second Amended Complaint. So nothing in the record supports the County's bald assertion that the time for a prompt Gerstein hearing had passed by the time the Second Amended Complaint was filed.

In addition, the County's argument ignores the ongoing harm of continued incarceration without a determination of probable cause. The injury to Jones, Simon, and Hyde did not abate because a certain number of hours passed without their having received a probable cause determination. Rather, the injury intensified the longer they stayed in jail without that determination. An injunction could have stopped that ever-growing harm.

One other aspect of the County's argument needs to be addressed. Under the County's theory, once the magic moment for a Gerstein hearing has passed, the County could keep the arrestees in jail without any hearings for as long as it wanted; the only remedy available to the arrestees would be to seek damages, and federal courts would be powerless to provide equitable relief. Nothing in the law stands for this proposition. Under this theory, a wide array of plaintiffs would not have justiciable cases. See, e.g., Nebraska Press Assocation v. Stewart,, 427 U.S. 539 (1976) (press gag order that expired as jury was impaneled is justiciable).

In the final analysis, this case does not present difficult issues of standing or justiciability. The case is the type

of controversy as to which this Court has on many occasions considered the merits. The holding of the Court of Appeals on the standing issue should be affirmed or the writ should be dismissed as improvidentially granted.

II.

THE COURTS BELOW PROPERLY CONCLUDED THAT THE COUNTY FAILED TO PROVIDE A PROMPT PROBABLE CAUSE DETERMINATION

One of the fundamental truths about warrantless arrests is that a certain percentage of individuals are arrested incorrectly. These persons deserve to go free as quickly as possible. "[T]he practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny." The Federalist Papers, No. 84, 511-12 (Hamilton) (New American Library 1961). Confining an individual for an undue

length of time, however brief the time seems, challenges seminal constitutional liberties. An expeditious probable cause determination provides a key protection for the wrongly accused.

Consequently, in Gerstein v. Pugh, 420 U.S. 103 (1975), this Court held that the Constitution requires that a person arrested without a warrant may not be incarcerated for an undue length of time without being afforded a probable cause determination. The Court noted that incarceration may have serious consequences, more serious than even the interference occasioned by the arrest.[9]

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[9] Pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships. [Citation.] Even pretrial release may be accompanied by burdensome conditions (continued...)

These consequences are all the more devastating where the person is detained without probable cause. As this Court explained, it follows that, under the Constitution, the period of detention without a probable cause determination should be "brief," sufficient only to permit the authorities to take the necessary administrative steps incident to arrest. Id. at 113-14.

This case presents a straightforward application of these principles. The County has admitted that it can provide

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[9](...continued)
> that effect a significant restraint of liberty. [Citation.] When the takes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty.

Gerstein, 420 U.S. at 113.

probable cause determinations more quickly than it does. J.A. 304. As the County's own brief makes plain, of 70 people, 23 people were held for 1 day, 23 for 2 days, 16 for 3 days, and 8 held presumably for longer. BP 46-47, n.14. As the County also admits, some percentage of those who are given a probable cause hearing are released.[10] It is palpably unjust for any individual to stay in jail for any extra time when there was no reason to arrest that individual in the first place.

Based on these principles, the district court found that, absent exigent circumstances, the County could complete all of the administrative steps incident to arrest within thirty-six hours after

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[10] The County gives the figure of six percent. BP 48, n. 15. In the record, the testimony of Chief Deputy Larry D. Smith indicates that in Orange County the percentage may be higher. J.A. at 161-162.

arrest. Since there is no evidence in the record with which the County can attack the district court's factual finding as clearly erroneous,[11] the County must instead admit its delay in providing probable cause determinations and try to find a justification for it. The County therefore argues that it conducts all probable cause determinations at arraignment; that California law has mandated that these determinations occur at arraignment; and that by ordering otherwise, the federal courts have interfered with California's right to administer its criminal justice system. BP 36-50. These arguments are beside the point, because this case is not about what

[11] Federal Rule of Civil Procedure 52(a); see Anderson v. City of Bessemer City, N.C, 470 U.S. 564 (1985).

California may or may not do, but about what Riverside County did.[12]

The County's major premise -- that adherence to California law automatically complies with Gerstein and precludes federal scrutiny -- fails because the County never established that it did comply with California law. The record

[12] It is true that Gerstein recognized that in some states it may be desirable to afford a probable cause determination at another formal pretrial procedure, and that some state procedures would need no adjustment. 420 U.S. at 122. Others would require only minor adjustments, such as "acceleration" of existing preliminary hearings. Id. But far from saying that the probable cause determination must await existing procedures, Gerstein held that existing procedures must, to a certain extent, accommodate the right of a pretrial detainee to a probable cause determination. If existing state procedures coincide with the administrative steps necessary to process arrest, then the state proceedings are adequate. If not, then existing procedures should be accelerated (Gerstein's "minor adjustments"), or else the probable cause determination should proceed independently.

does not demonstrate that the County always provides probable cause determinations at arraignment within five days after arrest. As noted above, the County treats individuals arrested for misdemeanors differently from those arrested for felonies. While the County may provide misdemeanor arrestees with the opportunity, upon their request, for a probable cause hearing at the time of arraignment, JA 126-127, the County informs felony arrestees that they can -- again at their request -- receive a probable cause determination "within a reasonable time." JA 128-129. No time period is specified, but testimony from the Riverside District Attorney suggests that probable cause determinations take place at the preliminary hearing, as much as ten court days after arraignment. See

J.A. 298-98 (deposition of Riverside County District Attorney Grover Trask). As a matter of law, this procedure could not comply with Gerstein.[13]

In short, the case poses no problems of federalism; a district judge narrowly crafted an injunction that implements federal constitutional law while respecting the needs of the County. See Missouri v. Jenkins, 495 U.S. ____, 109 L.Ed.2d 31 (1990).[14] If the County asks

[13] Contrary to the County's contention, California has never squarely decided when probable cause determinations in felony cases should take place. In Re Walters, 15 Cal. 3d 738, 126 Cal. Rptr. 239, 543 P.2d 607 (1975) (by its terms applying only to misdemeanors); Cal. Penal Code Section 991 (applying only to misdemeanors).

[14] Moreover, the record contains no evidence that Riverside will, as the County argues (see BP 46-50), suffer any disruption. The County of Riverside, through its District Attorney Grover C. Trask II, admitted that it could comply

(continued...)

the Court to use this case as a vehicle for announcing the relationship between state criminal pretrial procedures and

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[14](...continued)
with an order imposing a procedure like that used in Orange County, California (in which a probable cause determination must be made within thirty-six hours after arrest). J.A. 303-305. The record contains no evidence as to why the County would need additional time. Nothing in the record for example, shows that the district court's injunction would result in any additional costs or added delays in other administrative mechanisms. Although not in the record, the Amicus Curiae Brief, of the County's District Attorney supplies the only clue as to why the County wants to delay the probable cause determinations: a County's desire to obtain more evidence against the arrestee. This Court expressly noted in Gerstein, however, that the State cannot legitimately keep an accused in prolonged custody simply to develop a stronger case against him. Gerstein, 420 U.S. at 121, n. 21, citing Mallory v. United States, 354 U.S. 449, 456 (1957).

Gerstein, that request is inappropriate.[15]

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[15] Further, if the Court believes that it cannot affirm, record problems make that plenary review of the merits inappropriate. While the record indicates that Riverside County informs misdemeanor defendants of a right to a probable cause hearing, at their request, the record does not state how many requests are made. The record contains little information about the exact periods of incarceration before a probable cause determination for those arrested without a warrant. While the record suggests that the majority of detained arrestees are charged with felonies [J.A. at 299], the record does not indicate what percentage of the pretrial detainees in the Riverside County jail are arrested for felonies and what percentage are held on misdemeanor charges or whether those percentages have changed over time.

CONCLUSION

For the foregoing reasons, Amicus requests that the Court affirm the judgment of the United States Court of Appeals for the Ninth Circuit.

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